TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 199.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, AND JOHN FITZPATRICK, STATE TAX COLLECTOR, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED FEBRUARY 5, 1906.

(20,085.)

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, Plaintiffs in Error,
versus
BOARD OF ASSESSORS ET ALS., Defendants in Error.

Howe, Spencer & Cocke, for Plaintiffs in Error.
H. G. Dupre, Esq., for City of New Orleans, Defendant in Error.
George H. Terriberry, Esq., for Board of Assessors, Defendant in Error.
F. C. Zacharie, Esq., for John Fitzpatrick State Tax Collector, Defendant in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C. within thirty days (30) from the thirteenth day of January, A. D. 1906.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition.

Filed August 27th, 1904.

Civil District Court, Parish of Orleans, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO. OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

To the Honorable the Judges of the Civil District Court, for the Parish of Orleans:

The petition of the Metropolitan Life Insurance Company of New York, a corporation created by and existing under the laws of the State of New York, and domiciled in the City of New York, said State, herein appearing through George G. McHardy, its duly authorized Agent in the City of New Orleans, with respect, represents;

That your petitioner is a corporation engaged in the business of life insurance in various portions of the United States, and its domicile and principal place of business is in the City of New York, State of New York, where its general or home offices are located, and its officials reside; that it has an office in the City of New Orleans, where it is represented by subordinate managers only; that, in accordance with law, in the month of January, 1904, to-wit:—on or about the 21st day of January, 1904, it duly filed, with the Board of Assessors for the Parish of Orleans, its sworn statement of all the property owned by it subject to taxation under the laws of this State.

That, notwithstanding the fact that petitioner had made
2 true return of its taxable property to the said Board of Assessors, said Board did, nevertheless, proceed to, and did assess your petitioner upon property not owned or held by it or any of its officers in the State of Louisiana; and said Board, *and said Board*, despite the due and seasonable protest of your petitioner, did make an erroneous, illegal and void assessment on the following to-wit: $10000.00 credit, money loaned, etc. $10000.00 money in possession, etc.

Your petitioner avers that it did not have at any time during the current year, on hand or on deposit, within the State of Louisiana, funds exceeding the sum of $1500.00, as set forth in its sworn return.

Petitioner avers that the assessment in the sum of $10000.00 made by said Board on account of credits, money loaned, etc. was illegal, null and void for the reason that any credits, bills receivable, or monies loaned by and due petitioner are not located and payable in this State, but are located and payable and taxable only at the domicile of your petitioner; and are not subject, under the Constitution of the United States and the law of this State, to taxation by the State of Louisiana; and that said assessment by the Board of Assessors was an attempt to extend the taxing power of the State of Louisiana beyond the territorial jurisdiction thereof and constitutes a taking of property without due process of law, in violation of the 14th Article of Amendment of the Constitution of the United States, which this petitioner expressly pleads and claims the benefit of.

That, in accordance with the statutes made and provided, petitioner duly and seasonably applied to said Board of Assessors and to the Revision Committee of the City Counsel for the cancelation of said illegal assessment, and for reduction of said assessment of money on hand to the amount returned, under oath, by this petitioner to the Board of Assessors; that the said Board of Assessors, upon application, reduced the said amount of $10000.00 assessed to your petitioner as money in possession, to the sum of $7500.00
3 instead of to $1500.00 as prayed; but persisted in assessing your petitioner with the sum of $10000.00 for credits, bills receivable, etc.

That your petitioner thereupon made a legal tender of the sum of $46.00 to the Treasurer of the City of New Orleans, being in full of the amount of taxes legally due by it for the current year, which tender was refused.

Petitioner further avers that it has been notified by the said

Treasurer and by John Fitzpatrick, State Tax Collector for the First District, to pay the taxes based upon said illegal assessment; and that they will impose penalties and seize the property of your petitioner, unless enjoined and restrained by this Honorable Court.

Wherefore petitioner prays that the City of New Orleans, through its proper officer, the Board of Assessors, through its proper officers, and John Fitzpatrick, the State Tax Collector for the First District, be duly cited to appear and answer hereto; and that after due proceedings had, there be judgment in favor of your petitioner and against said defendants, decreeing that the assessment against petitioner in the sum of $10000.00 on account of credits, money loaned etc. be declared to be null and void; and the assessment against petitioner on account of monies on hand etc., be reduced to the sum of $1500.00; and that the defendants, and each of them, be restrained and prohibited from collecting, or attempting to collect any taxes based upon said illegal assessment; and petitioner prays for all costs, and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Petitioner.

Answer of Board of Assessors and Tax Collector.

Filed September 15, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO. OF NEW YORK
vs.
BOARD OF ASSESSORS ET ALS.

4 To the Honorable the Judges of the Civil District Court, for the Parish of Orleans.

Now come the Board of Assessors and the State Tax Collector by their undersigned attorney made defendant herein, and for answer to plaintiff's demand, deny all and singular the allegations in plaintiff's petition contained and pray that the demand therein set forth be dismissed at plaintiff'- cost, and further pray that they have judgment for (10%) ten per centum Attorney's fees, on the aggregate amount of the Tax and penalties herein involved until paid, or so much thereof as may be named by this Honorable Court and for all general and equitable relief.

F. C. ZACHARIE,
Att'y Tax Collector,
Per E. K. SKINNER,
(Signed) E. K. SKINNER,
Att'y for Board of Assessors & Tax Col.

* * * * * * *

Answer of the City of New Orleans.

Filed September 26th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO.
vs.
BOARD OF ASSESSORS.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Now comes into Court City of N. O. made defendant herein, and reserving the benefit of any and all exceptions to which it may be entitled, for answer to the plaintiff's petition denies all and singular the allegations is said petition contained.

Wherefore defendant prays to be hence dismissed with judgment in its favor, and for costs.

(Signed) H. G. DUPRE,
Ass't City Attorney.

Continued:

Extract from Minutes Division "C."

WEDNESDAY, *October* 19*th*, 1904.

Present: Honorable John St. Paul, Judge.

5 This case came up for trial on this day.

Present: Chas. P. Cocke, Esq., Att'y for Plaintiff.
H. Garland Dupre, Esq., Ass't City Attorney, for the City of New Orleans.
E. K. Skinner, Esq., Attorney for Board of Assessors.

And after hearing pleadings and the evidence, the case was continued to Monday the 24th day of October 1904, at eleven o'clock A. M. for argument of Counsel.

Civil District Court, Parish of Orleans, Div. "C."

No. 74248.

METROPOLITAN LIFE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS.

Testimony in the above entitled and numbered cause, taken on the 19th day of October, 1904, before the Hon. John St. Paul, Judge.

Present: Messrs. Howe, Spencer & Cocke, For plaintiff. H. Garland Dupre, Esq., Ass't City Att'y for City of New Orleans. E. K. Skinner, Esq., for the Board of Assessors.

L. M. POOL, being duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. COCKE:

Q. Mr. Pool, do you live in the City of New Orleans?
A. Yes, sir.
Q. What is your business?
A. Assistant Cashier of the Hibernia Bank & Trust Company.
Q. How long have you occupied that position?
A. Two years—two and a half years.
Q. Continuously?
A. Yes, sir.
Q. Will you please state whether or not the Metropolitan Life Insurance Company of New York was a depositor in your Bank during the months of January, February, March and April, 1904?

6

A. Yes, sir, but the account is carried in the name of George H. McHardy, but we know it to be the Metropolitan Life Insurance Company's account.
Q. Will you state if you have made up an account, showing the amount of daily average of balances on that account during the months I have mentioned?
A. Yes, sir.
Q. Will you produce it?
A. Here is the statement.
Q. What is the average monthly balance?
A. For January, $2553.83; for February, $3392.19.
Q. Now, for March?
A. $3896.35.
Q. April?
A. $3658.02.
Q. Have you got the average for the four months?
A. Why, no, but I can make it in a second by adding the four months together.

By Mr. COCKE: I offer in evidence this statement.

Q. Mr. Pool, will you say whether this is a fair representation of the daily average balances maintained by the Metropolitan Life Insurance Company for the year preceding those four months?

A. Yes, that is my recollection.

By the COURT: What is the average?

By. Mr. COCKE: Something in the neighborhoos of $3500.00. We have not figured the four months and made an average on those. I shall show by Mr. McHardy that from the balances taken by him from his books that it shows a daily average balance much smaller than that.

Q. Now, Mr. Pool, how would you account for that fact,—if it is a fact?

A. That is simple. As a rule, the balance in the bank is much smaller than that shown on the corporation books, because checks are in transit. You might have $1000 and send out a credit,
7 and you didn't have it.

Q. If, during the period covered by this, it is shown that during the whole period there was an average difference of $1000, it would not mean that there was $1000 in the bank, because checks were outstanding?

A. Yes, that is plain.

Q. This statement you have produced is correct?

A. Yes, sir.

By Mr. DUPRE:

Q. But the fact would still remain, even though checks be outstanding, that there would be that amount standing to the credit of the Metropolitan Life Insurance Company on your books?

A. Yes, sir.

Q. And yet they could issue their checks for $1000?

A. Yes, sir.

Q. That account is represented in your bank in the name of George G. McHardy, Agent?

A. Yes, sir, that is what it shows.

Q. And it is the property of the Metropolitan Life Insurance Company?

A. Yes, sir.

Q. Would it be very much trouble, Mr. Pool, for you to submit to us a statement, covering the year 1903, from January to December?

A. Of course, it would.

By the COURT:

Q. From your memorandum of the account that passed through your hands daily, *daily* can — fix the average balances?

A. Yes, but that is my recollection. In the nature of their business there would not be much variation, but in some business there would be a large variation during different times of the year,—such as insurance companies which collect large premiums.

By Mr. COCKE:

Q. You know that this Company is engaged in the industrial insurance business?

A. Yes, sir.

8 Q. And in that business the premiums are from five to thirty cents a week?

A. Yes, sir.

Q. And they are collected weekly?

A. Yes, sir.

Q. And consequently there would not be as much variation in their daily balances as there would be in a Company receiving very large premiums?

A. Yes, exactly.

JOSEPH W. CRUZAT being duly sworn by the Minute Clerk, testified as follows:—

Direct examination by Mr. COCKE:

Q. You reside in the City of New Orleans?

A. Yes, sir.

Q. What is your business?

A. I am one of the book keepers in the New Orleans National Bank.

Q. Will you state whether or not the Metropolitan Life Insurance Company was a depositor in your bank during the first four months of the year 1904?

A. We have no account by that name, we have an account in the name of George Lohre, Superintendent.

Q. Is it a fact or not, that that was the Company's account?

A. I cannot say.

By Mr. DUPRE: That is admitted.

By Mr. COCKE:

Q. Will you state whether you had occasion, at Mr. McHardy's request, to make up a statement showing the daily average balance of that account during those four months?

A. Yes, I was asked as to the daily balances, and this is as they appear on the ledger.

Q. You have not made up the daily average balance?

A. No, sir.

9 Q. How long would it take you to do that?

A. Some little time.

Q. Will you state whether or not, from your recollection of the account, are those figures fairly represented in the daily balances?

A. I can't say this, because I have been handling the account only a short while; I can only say that this is a copy of the ledger. I got the account only fifteen days before it was closed.

Q. You would not remember it?

A. No, sir.

It is admitted by counsel for the several defendants in this case that the plaintiff is a corporation, created under the laws of the State of New York and is domiciled in the State of New York, and is licensed to do business in the State of Louisiana.

By Mr. SKINNER: I object to that, because the Constitution of this

State requires that all foreign corporations doing business here must have a domicile here.

Admission.—It is admitted that the plaintiff Company is chartered under the laws of the State of New York and that its main office is in the City of New York and that its general officers reside there and that its domicile, under the laws of New York, is there.

It is further admitted by counsel for the several defendants that the plaintiff has complied with the conditions of the statute made a condition precedent to bring suit in respect to their return within the time provided by the statute,—petition to the Board of Assessors for the reduction, and petition to the Committee of the City Council, and that the Council Committee granted a reduction to the sum of $7500.00, for money in possession.

It is further admitted that the accounts of George G. McHardy in the Hibernia Bank, and George Lohre in the New Orleans National Bank, are the accounts of the Metropolitan Life Insurance Company.

It is also admitted that the State Tax Collector and the State Treasurer has threatened a seizure in this case and will proceed, unless prevented by order of Court.

GEORGE G. MCHARDY being duly sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. COCKE:

Q. You live in the City of New Orleans?
A. Yes, sir.
Q. What connection have you with the plaintiff Company?
A. Superintendent.
Q. What are the nature of your duties?
A. Superintending the Company's business generally in the State of Louisiana.
Q. That is to say you are in charge of the local office in New Orleans?
A. Yes, sir.
Q. Where were you depositing the funds of the Company at the beginning of the year 1904 and prior thereto?
A. In the Hibernia Bank & Trust Company.
Q. Was there any other office at that time also in this same first district?
A. Yes, sir.
Q. Who was the superintendent of that office?
A. George Lohre.
Q. Is that office still in existence?
A. Yes, sir.
Q. What has become of it?
A. It has been amalgamated with my office.
Q. You deposited in the Hibernia Bank and Mr. Lohre deposited where?
A. In the New Orleans National.
Q. Now, when was Mr. Lohre's office abolished?
A. In May, 1904.

Q. Will you state whether or not the Company kept any accounts in the City of New Orleans,—bank accounts,—save those two that you have mentioned?

11 A. None at all, sir; no, sir.

Q. Therefore, as I understand, all of the collections made by you went into either one of those two banks?

A. Yes, sir.

Q. Mr. McHardy, have you at my request, undertaken to find out the daily average balances shown by your books during the four months that we have been speaking of?

A. Yes, sir.

Q. Will you produce the statement?

A. Here it is.

Q. What does that show the daily average balance to be?

A. $2173.00, the daily average.

Q. Then the difference between that and the amount shown by Mr. Pool would represent the difference in checks drawn from day to day?

A. Yes, sir.

Q. That is the way that you account for it?

A. Yes, sir.

Q. Now, Mr. McHardy, you return in this matter $1500,—you and Mr. Lohre together,—as the daily average balance?

A. Yes, sir.

Q. On your own statement, and on the statements made by these gentlemen from the Banks, it appears that your daily average balances were more than that. I want you to state how you happen to return those figures.

A. When the statement had to be made up, I sent across to the Hibernia Bank to ascertain our average for the first three months, and the memorandum returned, showed the balance to be $1200.00.

Q. A similar inquiry was made of the New Orleans National Bank?

A. Yes, sir.

Q. That information was given without an actual taking of the figures?

A. Yes, sir, there was no detail of the figures at all.

Q. Then, you acted upon that in making sworn return?

A. Yes, sir.

12 Q. Mr. McHardy, how much money had the Company in the shape of loans made in New Orleans on the 1st of January, 1904?

By Mr. DUPRE: If your Honor please, I object to any proof going to show a reduction of the item of the money loaned. His suit is merely for a cancellation.

By Mr. COCKE: I desire to show that this proof is in connection with the claim for cancellation and I will connect it.

By Mr. COCKE:

Q. Mr. McHardy, how much money did you have loaned in the State of Louisiana on the 1st January, 1904?

A. I should say pretty near closely to about $10,000.

Q. I want you to describe to the Court the method by which a loan is applied for to the Company and passed on by the Company, and how the contract is accepted.

A. The policy holder applies to me for a loan on his policy. I take the application and I advise the Company and I procure the necessary note.

Q. Where do you procure that note from?

A. From the Home Office in New York.

Q. Who passes upon the application?

A. The Home Office.

Q. In case they decide to accept that loan, they advise you?

A. Yes, sir.

Q. Then what do you do?

A. I take the policy with the note and send it to the Home Office, and if they pass upon it approvingly, the check is sent to me personally.

Q. Where were the notes, the *the* policies securing the notes, representing these $10,000 on the 1st day of January, 1904. In other words, where were they located?

A. In New York, sir.

Q. Are those notes always in New York?

A. Yes, sir.

Q. That is to say that they are sent by you to New York—when?

A. Immediately upon the loan being completed.

13 Q. Do you, in any case, retain for more than twenty four or forty eight hours the evidence of indebtedness in your office?

A. No, sir.

Q. In other words, within twenty four or forty eight hours, the notes and policies go to the Home Office in the course of business?

A. Yes, sir.

Q. Then as I understand you, on the 1st day of January, 1904, the Company had about $10,000 loaned here?

A. Yes, sir.

Q. The notes with the policies securing them were all in New York?

A. Yes, sir.

Q. Will you state how much money was loaned by the Company between the 1st of January, 1904, and say, the 1st day of April, 1904?

By Mr. DUPRE: This is not a question of amount at all, if anything was loaned at all. I object as immaterial and irrelevant in this suit for cancellation.

not?

By Mr. COCKE: I propose to show that I am now asking for a reduction; I don't claim a reduction here. I am claiming on this item an absolute cancellation of this whole item, and I propose to show the course of business upon which we are going to claim that this whole $10,000 is exempt.

By the COURT: The objection goes to the effect.

By Mr. DUPRE: To which ruling of the Court, counsel excepts,

reserves a bill, and has this note made in lieu of a formal bill of exceptions.

By Mr. COCKE:

Q. How much money did you loan in Louisiana in those first four months of the year?

A. I didn't count up to the end of April, but from the 1st of January to the 10th of April, we loaned $1492.00.

Q. From the 1st of January to the 10th of April, $1492.00?

A. Yes, sir.

By the COURT:

14 Q. Was that in the shape of notes?

A. Yes, sir.

Q. Not on open accounts?

A. No, sir.

Q. Just all on notes?

A. Yes, sir.

Q. Those notes you say, are immediately transferred to New York?

A. Yes, sir.

By Mr. COCKE:

Q. Then I understand you to testify that in addition to those loans in those four months, the same course was pursued in respect to the securing of the note and surrender of the policy that was followed in respect to the $10,000 existing on the 1st of January as a credit to the Company in New York?

A. Yes, sir.

Q. Will you state whether you made tenders to the City Treasurer and State Tax Collector?

A. Yes, sir.

Q. How much did you tender to the State Treasurer?

A. Forty six dollars.

Q. How much did you tender to the State Tax Collector?

A. Forty dollars and sixty cents.

Q. What was done in each case?

A. It was refused.

By the COURT:

Q. These deposits made by you in Bank were general deposits were they not?

A. Yes, sir.

Q. That is to say, the Bank did not undertake to return you specific money?

A. No, sir.

Q. It simply figured as a credit on the books of the Bank?

A. Exactly, sir.

Cross-examination by Mr. DUPRE:

Q. Mr. McHardy, you don't dispute in any way the returns made by the two Banks as to the daily averages which they had to your credit and to the credit of Mr. Lohre?

A. No, sir.

Q. You admit that on each one of the days set forth in these statement-, you could have gone to the Bank and claimed the amount there to your credit?

15 A. I could not claim it, because I had checks outstanding.

Q. But the bank would have paid that amount upon your check if presented on that day, would it not?

A. I suppose so.

Q. The money loaned, of which you have just spoken, does not include in any way the insurance premiums paid to your Company from week to week by the people who have policies in your Company?

A. The loans are only made on the larger class of policies.

Q. The insurers paid cash from week to week on their loans?

A. No, sir, the loan is continued until they are taken up. They simply pay interest year by year as it becomes due.

Q. If an insurer takes out a policy, his premiums are paid weekly or semi-weekly in cash?

A. Yes, sir, on industrial policies.

Q. So that phase of your business,—the paying into your Company by the insurers of their weekly or monthly premiums,—is not included by you in this amount which you say was loaned by your Company to policy holders?

A. No, sir.

Q. It is only after the policies have reached a certain stage that holders can raise money on them?

A. Yes, that is right.

Q. Well, how do they proceed for the raising of money on their policies?—To whom is application made,—to you?

A. Yes sir.

Q. What do you do after that?

A. I forward the application to the Home Office, with the request that the loan be granted them (if I consider it all right)—and that the necessary loan note be forwarded, and the note is sent to me.

Q. Where is the note executed?

A. Here, as far as the signatures are concerned.

Q. What do you do with the note?

A. I take the policy, attach it to the note with any letter

16 necessary in the case, and forward it to the Home Office.

Q. Where is the interest paid on those notes?

A. Here, to me.

Q. And the interest is remitted by you?

A. Yes, sir.

Q. And when the note is liquidated—paid in full—how is that managed?

A. It is invariably paid to me.

Q. Whom is payment made to for final settlement of the note,—in the same way as the interest?

A. Yes, sir.
Q. And the note is sent back to you and you deliver to the owner?
A. Yes, sir.

By Mr. COCKE:

Q. Are you required to keep any books, showing the condition of the loans, or is that done at the Home Office?
A. We don't keep any special books for account of loans.
Q. The only way that the loans would figure in your local transaction would be by the deposit when made?
A. Yes, sir.
Q. And that would go into your general account, and figures in this account that you have already spoken of?
A. Yes, sir.

By Mr. DUPRE:

Q. What is the average amount of your income from premium payments on your industrial policies during the year?
A. It averages now pretty near $7000 per week.
Q. And that is paid in cash to you?
A. Oh, yes, sir.

By Mr. COCKE:

Q. What is the system of remittances here?
A. The industrial remittances are made once a week. The remittances under two other branches, which is the ordinary branch,—one branch is remitted on the 10th or the 25th of the month, and the other on the 5th and 20th of each month.

17 By Mr. DUPRE:

Q. Let me understand these different branches. It is all life insurance business?
A. Yes, sir.
Q. And the distinction is whether the payments are weekly, or annually, or semi-annually?
A. Yes, sir.
Q. Is there any distinction between your policy holders?
A. No, sir.

By Mr. COCKE:

Q. Mr. McHardy, you have authority to pay all your office expenses here, and do pay them, don't you?
A. Yes, sir.
Q. They are pretty heavy?
A. You mean salaries?
Q. Yes?
A. Yes, but I receive a check from the Home Office to pay them with.
Q. You receive a check from the Home Office to pay the salaries with?
A. Yes, sir.
Q. To pay your superintendents?

A. Yes, sir; I get a list of the salaries weekly.
Q. That check is drawn on what bank?
A. It comes from New York. It is drawn on the National Shoe and Leather Bank of New York.

By Mr. DUPRE:

Q. How do you receive remittances to pay those borrowers?
A. By check.
Q. On what bank?
A. The National Shoe & Leather Bank of New York.
Q. How about renewals for a time when the time expires?
A. The borrower has the right to take up the note when due or to pay interst.
Q. Have you had occasion to sue in the last few years in these Courts, any of those who refused to pay you?
A. No, sir.

18 By the COURT:

Q. In other words, the loans of which you speak, are made exclusively upon policies in your own Company?
A. Yes, sir.
Q. And you never loan any more than the value of the policy?
A. Exactly.

By Mr. DUPRE: It is admitted that the assessment rolls for 1904, under the assessment against the Metropolitan Life Insurance Company shows an item of money in possession of $7500.00, and the further item of money loaned at interest, credits, and so forth $10,000.

It is also admitted that Mr. Pool, of the Hibernia Bank & Trust Company, figures the daily average balance to amount to $3370.00, and that Mr. Cruzat, of the New Orleans National Bank, figures the George Lohre, Superintendent's account, to show the daily balance of $815.00.

NOTE.—Testimony closed; case continued to Monday October 25th for argument.

A true and correct Report.
(Signed) A. E. OLIVERIA,
Stenographer.

Statement. Offered in Evidence by Counsel for Plaintiffs.

Filed October 26th, 1904.

Geo. Lohre, Sup't, *of* the New Orleans National Bank, January, 1904.

19

Dr. Cr. January, 1904.		February, 1904.		March, 1904.		April, 1904.	
1	557.93	1	707.73	1	1154.10	1	580.96
2	757 02	2	1181.60	2	1490.10	2	509.10
3	757.02	3	1360.40	3	1574.57	3	509.10
4	473.87	4	527.44	4	497.30	4	758.40
5	886.42	5	667.87	5	585.30	5	1003.43
6	1325 47	6	558.	6	585.30	6	1319.43
7	360 49	7	558.	7	585.30	7	367.82
8	360.49	8	410.	8	1286.39	8	535.23
9	444.17	9	1228.43	9	1595.94	9	535.23
10	444.17	10	1540.53	10	406.35	10	535.23
11	698.56	11	659.27	11	541.90	11	940.09
12	1042.06	12	891.10	12	463.96	12	1064.63
13	1431.06	13	659.72	13	463.96	13	849.38
14	554.91	14	659.72	14	527.62	14	1164.58
15	534.79	15	689.77	15	1254.65	15	574.60
16	576.49	16	689.77	16	1537.65	16	430.79
17	576.49	17	1294.55	17	1553.90	17	430.79
18	960.65	18	273.26	18	523.62	18	711.19
19	1718.85	19	538.79	19	523.62	19	1075.09
20	1294.85	20	559.35	20	523.62	20	1435.40
21	627.38	21	559.35	21	795.52	21	1591.35
22	631.43	22	559.35	22	1292.55	22	668.20
23	631.43	23	1301 73	23	1626.75	23	668.20
24	631.43	24	1598.61	24	1841.95	24	668.20
25	449.60	25	392.72	25	607.15	25	668.20
26	1360.61	26	522.52	26	487.05	26	834.29
27	1707.51	27	432.32	27	487.05	27	1188.29
28	759.35	28	432.32	28	447.14	28	1202.98
29	936.12	29	421.50	29	1074.71	29	220.82
30	839.93	30		30	1390.71	30	220.82
31	839.93	31		31	580.96	31	
	25,170.58		21,876.71		28,806.69		23,262.82

A true copy.
Signed,
J. W. CRUZAT,
Bkpr.

A true copy.
Signed,
J. W. CRUZAT.
Bkpr.

A true copy,
Signed,
J. W. CRUZAT,
Bkpr.

A true copy.
—,
— —,
—.

On the reverse:

25,169.78
21,875.71
28,306.69
23,262.82

98,615.00

$815.00
for the 4 months.

Statement. Offered in Evidence by Counsel for Plaintiffs.

Filed October 26th, 1904.

20 Average for 4 Months, $3370.00.

1904.		
Jan'y 1		3853.29
2		1768.33
3		1768.33
4		1072.33
5		1073.33
6		3120.13
7		670.03
8		670.03
9		2455.24
10		2455.24
11		3171.86
12	6099.39	4074.99
13		3574.99
14		1694.47
15	75.37	
16		1542.85
17		1542.85
18		2049.57
19		4707.07
20		4707.07
21		1568.48
22		1717.31
23		2954.83
24		2954.83
25		3913.24
26		6084.88
27		6084.88
28		2680.81
29		1380.92
30		1966.51
31		1966.51
		79244.20
Less Over dft. Jan. 15/04		75.37
		79168.83

Average Bal. $2553.83.

21

Feb. 1		1807.64
2		4361.99
3		4166.99
4		544.35
5		1770.02

6	.....	2806.50
7	.....	2806.50
8	.....	2796.20
9	.....	6231.74
10	.....	4458.80
11	.....	1865.79
12	.....	2891.78
13	.....	2537.33
14	.....	2537.33
15	.....	3385.42
16	.....	3385.42
17	.....	6376.70
18	.....	3011.25
19	.....	2818.85
20	.....	2871.53
21	.....	2871.53
22	.....	2871.53
23	.....	5576.58
24	.....	6735.64
25	.....	2610.90
26	.....	3832.22
27	.....	4027.61
28	.....	4027.61
		98373.65

Average Balance $3392.19.

22

1904.

March 1	.....	5048.01
2	.....	5057.15
3	.....	6571.94
4	.....	1557.40
5	.....	2062.39
6	.....	2062.39
7	.....	2702.72
8	.....	5189.57
9	.....	5240.85
10	.....	3056.58
11	.....	3597.79
12	.....	2202.08
13	.....	2202.08
14	.....	2303.64
15	.....	5834.10
16	.....	5931.92
17	.....	2462.11
18	.....	2019.59
19	.....	2592.32
20	.....	2592.32
21	.....	2950.74
22	.....	5855.66

23	.....	5860.66
24	.....	4028.75
25	.....	4963.54
26	.....	4971.61
27	.....	4971.61
28	.....	4631.10
29	.....	4945.69
30	.....	4945.69
31	.....	2274.78
		120786.78

Average balance of $3896.35.

23

1904.

April 1	.....	2274.78
2	.....	1580.29
3	.....	1580.29
4	.....	2298.38
5	.....	5334.19
6	.....	5334.19
7	.....	2534.85
8	.....	2924.33
9	.....	4086.12
10	.....	4086.12
11	.....	2892.70
12	.....	5042.63
13	.....	4542.63
14	.....	1364.48
15	.....	1502.44
16	.....	3422.88
17	.....	3422.88
18	.....	3608.30
19	.....	5779.32
20	.....	5779.32
21	.....	3109.17
22	.....	3676.73
23	.....	4140.05
24	.....	4140.05
25	.....	4697.32
26	.....	7389.05
27	.....	7389.05
28	.....	901.39
29	.....	2518.73
30	.....	2387.98
		109740.64

Average balance $3658.02.

24 *Submitted.*

Extract from Minutes, Division "C."

MONDAY, *November 14th*, 1904.

Present: Honorable John St. Paal, Judge.

After hearing argument of Charles P. Cocke, Esq., Attorney for Plaintiff and of H. Garland Dupre Esq., Ass't City Attorney for defendants, this case was submitted and taken under advisement.

Judgment.

Civil District Court, Parish of Orleans, Division "C."

No. 74248.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

In this case submitted for adjudication, the law and the evidence being in favor of plaintiff and against the defendants and for the reasons assigned, in open Court on this day, in the written opinion on file.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, The Metropolitan Life Insurance Company of New York, and against the Defendants, The City of New Orleans, The Board of Assessors for the Parish of Orleans and John Fitzpatrick State Tax Collector for the First District of New Orleans, decreeing and ordering that the assessment for the year 1904, against the plaintiff Company, on moneys on hand etc., be reduced to the sum of Four thousand dollars and further decreeing the assessment for said year against said Company, in the sum of Ten thousand dollars on account of credits, money loaned, etc., to be null and void.

It is further ordered, that said defendants and each of them be and they are hereby restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment, and that defendants pay all costs of this suit.

Judgment read and rendered in open Court December 5, 1904.

Judgment signed in open Court December 9th, 1904.

25 (Signed) JOHN ST. PAUL, *Judge.*

Reasons for Judgment.

Filed December 5th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INS. CO.
vs.
BOARD OF ASSESSORS & ALS.

Opinion.

This is an action for reduction of assessment on "Money in possession, on deposit, etc." and for the cancellation of an assessment upon "credits, money loaned, bills receivable, &c.

The evidence shows, and it was admitted at the bar by all counsel, that the average of "Money in possession and on deposit" by plaintiff does not exceed $4,000.00 and that item ought therefore to be reduced accordingly.

The evidence also shows, and it is not disputed, that the only "Credits, money loaned and bills receivable" belonging to the plaintiff and intended to be taxed consist of loans made to its policy holders in this State and evidenced by their notes secured by pledge of its own policies, all of which, as soon as executed, are transmitted to the home office in the City of New York and are returned to this city only for purposes of collection or renewal.

The authority under which it is proposed to assess and tax these notes is the 7th section of Act No. 170 of 1898, the last clause whereof reads as follows; * * * *and all bills receivable obligations, or credits arising from business done in this State are hereby declared assessable within this State and at the business Domicile of said non-resident, his agent or representative."*

This section is identical in terms with the corresponding section of act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared, substantially, in Liverpool &c. Ins'ce Co. *vs.* Board of Assessors, 44 Ann. 7660; and 770, that *"no Legislative power existed to change the situs of debts due to*
26 *non-residents"* unless such debts had assumed some *"concrete form"* in the evidences thereof and *"such evidences are situated in the State,* language tantamount to a declaration that this provision of the Statute was repugnant to some higher law; *i. e.,* was *"unconstitutional"*—this high authority then, I am constrained to declare that so much of the 7th Section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to non-residents, unless the same are *"situated in the State,"* is unconstitutional and therefore, void, and any assessment made in pursuance thereof is therefore null."

There must be judgment herein accordingly.
N. O. Dec. 5, 1904.
(Signed) JOHN ST. PAUL, *Judge.*

Judgment Signed.

Extract from Minutes, Division "C."

FRIDAY, *December 9th,* 1904.

Present: Honorable John St. Paul, Judge.
This Judgment read and rendered in open Court on December 5th, 1904, was signed in open Court on this day.

Motion of Appeal.

Entered on Minutes of Same Date. Filed December 20th, 1904.

Civil District Court, Division "C."

No. 74248.

METROPOLITAN LIFE INSURANCE CO.
vs.
BOARD OF ASSESSORS ET ALS.

On motion H. G. Dupre, Assistant City Attorney, of George H. Terriberry, Attorney for the Board of Assessors for the Parish of Orleans, and of F. C. Zacharie, Attorney for John Fitzpatrick, State Tax Collector of the First District of New Orleans and on suggestion to the Court that there is error to the prejudice of these defendants in the judgment rendered herein and signed on Dec. 9, 1904, and that accordingly they desire to appeal suspensively to the Supreme Court of Louisiana.

27 It is ordered that a suspensive appeal, without bond as the law directs, be granted to the defendants herein from the judgment herein rendered, and signed on Dec. 9, 1904, returnable to the Honorable the Supreme Court of Louisiana on the first Monday of January, 1905, according to law.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, William B. Murphy, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing Thirty-one (31) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Metropolitan Life Ins. Co. of

New York is plaintiff, and Board of Assessors for the Parish of Orleans is defendant, instituted in this Court and now in the records thereof under the No. 74248 of the Docket thereof, Div. C., the Honorable John St. Paul, Judge.

In Testimony Whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this Third day of January in the year of our Lord, one thousand nine hundred and five and in the one hundred and twenty-ninth year of the Independence of the United States of America.

(Signed) W. B. MURPHY,
[SEAL.] *Deputy Clerk.*

28 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Continuance.

NEW ORLEANS, THURSDAY, *March* 30, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This case was ordered by the Court to be continued with preference.

Continuance.

NEW ORLEANS, THURSDAY, *April* 27, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This case was ordered by the Court to be continued with preference.

Motion and Order to Continue by Preference.

NEW ORLEANS, THURSDAY, *May* 25, 1905.

The Court was duly opened, pursuant to adjournment.

29 Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

On motion of Charles Pollard Cocke, Esq., of counsel for plaintiff and appellee, and upon suggesting the absence, of Mr. Francis Charles Zacharie of counsel for John Fitzpatrick, State Tax Collector, one of the defendants and appellants, due to illness; It is ordered by the court that this cause, heretofore assigned for hearing today, be continued with preference.

Cause Argued and Submitted.

NEW ORLEANS, THURSDAY, *November* 9, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francise T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

This cause came on this day to be heard and was argued by counsel:—Mr. Charles Pollard Cocke, Esq., opened for the plaintiff and appellee; Mr. Francis Charles Zacharie replied on behalf of the defendants and appellants; and Mr. Cocke closed the argument. The court then took the cause under advisement upon the briefs now on file for the respective parties in interest.

30 *Judgment.*

NEW ORLEANS, MONDAY, *November* 20, 1905.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

His Honor Mr. Justice Nicholls, pronounced the opinion and judgment of the Court in the following case:—

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

Appeal from the Civil District Court, Parish of Orleans.

For the reasons assigned it is ordered adjudged and decreed that in so far as the judgment appealed from decrees the assessment against the plaintiff, in the sum of $10,000 for the year 1904, on account of credits, monies loaned etc., to be null and void, and decrees the unconstitutionality of the law upon which it is based, the same be annulled, avoided and reversed, and that in so far as such judgment fails to award to the defendants the attorney's fees allowed by law, the same be amended to the extent that there now be judgment in favor of the defendants, the Tax Collector, and against the plaintiff condemning the latter to pay in addition to the tax to be recovered 10% on that portion thereof with respect to which no reduction of assessment had been obtained in this proceeding.

It is further ordered adjudged and decreed that in all other respects the judgment appealed from be affirmed, the plaintiff to pay costs of appeal.

Opinion.

31 & 32 MONDAY, *November* 20, 1905.

Mr. Justice Nichols.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

Appeal from the Civil District Court for the Parish of Orleans.

Statement of the Case.

The Plaintiff, a corporation created and existing under the laws of the State of New York appearing in the suit through its authorized agent in the City of New Orleans alleged:

That it is a corporation engaged in the business of Life Insurance in various portions of the United States and its domicil is in the City of New York where its general or Home office- are situated and its officials reside. That it has an office in the City of New Orleans, where it is represented by subordinate managers only. That in accordance with law in the month of Jan. 1904, to wit, on or about

the 21st day of January, 1904, it filed with the Board of Assessors for the Parish of Orleans, its sworn statement of all the property owned by it subject to taxation under the laws of this State. That notwithstanding the fact that Petitioner had made a true return of its taxable property to the said Board of Assessors, said Board did nevertheless proceed to, and did assess petitioner upon property not owned or held by it or any of its officers, in the State of Louisiana; and said Board, despite the due and seasonable protest of petitioner did make an erroneous illegal and void assessment on the following, to-wit: $10,000.00 credit, money loaned etc., $10,000.00 money in possession etc., Petitioner averred that it did not have at any time during the current year, on hand or on deposit within the State of Louisiana, funds exceeding the sum of $1500.00, as set forth in their sworn return. That the assessment in the sum of $10,000.00 made by said Board on account of credits, money loaned etc., was illegal null and void for the reason that any credits, bills receivable or monies loaned by and due petitioner are not located and payable in
33 this State but are located and payable and taxable only at the domicil of petitioner, and are not subject, under the Constitution of the United States and the laws of this State, to taxation by the State of Louisiana; and that said assessment by the Board of Assessors was an attempt to extend the taxing privilege of the State of Louisiana beyond the territorial jurisdiction thereof and constituted a taking of property without due process of law in violation of the 14th Article of Amendment of the Constitution of the United States, which this petitioner expressly pleaded and claimed the benefit of.

That in accordance with the statutes made and provided petitioner duly and seasonably applied to said Board of Assessors and to the Revision Committee of the City Council for the cancellation of said illegal assessment and for the reduction of said assessment of money on hand to the amount returned, under oath by this petitioner to the Board of Assessors; that the said Board of Assessors upon application reduced the said amount of $10,000.00, assessed to petitioner as money in possession, to the sum of $7500.00 instead of to $1500.00 as prayed; but persisted in assessing petitioner with the um of $10,000.00 for credits, bills receivable, etc.

That petitioner thereupon made a legal tender of the sum of $46.00 to the Treasurer of the City of New Orleans, being in full of the amount of taxes legally due by it for the current year which tender was refused. That it had been notified by the said Treasurer and by John Fitzpatrick, State Tax Collector for the First District to pay the taxes based upon said illegal assessment and that they would impose penalties and seize the property of petitioner unless enjoined and restrained by this Honorable Court: In view of the premises petitioner prayed that the City of New Orleans through its proper officer, the Board of Assessors, through its proper officer, and John Fitzpatrick and State Tax Collector for the First Dis-
34 trict, be duly cited to appe-r and answer hereto; and that after due proceedings had there be judgment in favor of petitioner and against said defendants decreeing that the assessment

against petitioner in the sum of $10,000.00, on account of credits, money loaned etc., be declared to be null and void, and that the assessment against petitioner on account of monies in hand, etc., be reduced to the sum of $1500.00: and that the defendants and each of them, be restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment, and petitioner prayed for all costs and for general relief.

The Board of Assessors and State Tax Collector filed an answer in which they pleaded the general issue and prayed that Plaintiff's demand be dismissed. They prayed that they have judgment for 10% attorneys' fees on the aggregate amount of the taxes and penalties involved in the case until paid or so much thereof as might be named by the Court and for all and general relief.

The City of New Orleans pleaded the general issue and prayed that Plaintiffs demand be dismissed and that there be judgment in its own favor.

The District Court declared that the law and the evidence were in favor of the Plaintiff and against the Defendants and for the reasons assigned in open Court in the written opinion it rendered judgment in favor of plaintiff.

The Judgment adjudged and decreed that there be judgment in favor of plaintiff, The Metropolitan Life Insurance Company of New York, and against the Defendants, the City of New Orleans. The Board of Assessors for the Parish of Orleans and John Fitzpatrick State Tax Collector for the First District of New Orleans decreeing and ordering that the assessment for the year 1904, against the Plaintiff Company on moneys in hand, etc., be reduced to the sum of Four Thousand Dollars and further decreeing the assess-
35 ment for said year against said Company in the sum of ten thousand dollars on account of credits, money loaned etc., to be null and void.

It further ordered that said defendants and each of them be and they are hereby restrained and prohibited from collecting or attempting to collect any taxes based upon said illegal assessment and that defendants pay all costs of this suit."

The written reasons were as follows:

"This is an action fo- reduction of assessment on Money in possession, on deposit, etc., and for the cancellation of an assessment upon credits, money loaned, bills receivable, &c.

The evidence shows and it was admitted at the bar by all counsel, that the average of "Money in possession and on deposit by plaintiff does not exceed $4,000.00 and that item ought therefore to be reduced accordingly.

The evidence also shows and it is not disputed, that the only "Credits, money loaned and bills receivable," belonging to plaintiff and intended to be taxed consist of loans made to their policy holders in this State, and evidenced by their notes secured by pledge of its own policies, all of which as soon as executed are transmitted to the Home office in the City of New York and are returned to this City only for purposes of collection or renewal.

The authority under which it is proposed to assess and tax these

notes is the 7th Section of Act No. 170 of 1898, the last clause whereof reads as follows: * * * and all *bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State and at the business domicil- of said non-resident, his agent or representative.*"

This section is indentical in terms with the corresponding section of Act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared, substantially in Liverpool &c. Ins. Co. *vs.* Board of Assessors, 44 Ann. 760, 770, that "no Legislative power existed to change the situs of debts due to non residents" unless such debts had assumed some "concrete form"—in
36 the evidence thereof and "*such evidences are* situated in the State, language tantamount to a declaration that this provision of the Statute was repugnant to some higher law; *i. e.,* was "unconstitutional" under this high authority, then, I am constrained to declare that so much of the 7th Section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to nonresidents, unless the same are "situated in the State," is unconstitutional and therefore void, and any assessment made in pursuance thereof is therefore null."

The Defendant appealed.

In the brief on behalf of the Insurance Company, the *the* statement is made that on the trial Defendant's Counsel made such admissions as reduced this cause to the sole question of the legality and unconstitutionality of the attempted tax on credits, money loaned, etc. * * *

"The plaintiff is a corporation under the laws of New York. It had duly complied with the statutes of the State regulating the entry and doing of business by foreign insurance companies and had and maintains an office in the City of New Orleans. Following the usual notice on Jan. 21st, 1904, it filed its sworn return of property owned by it and subject to taxation in this State. The Board of Assessors proceeded to alter this section in two particulars. It assessed to the Plaintiff the sum of $10,000 as money in possession or on deposit and $10,000 as credits, monies loaned and Bills receivable."

"On the 1st of January, 1904, the Plaintiff had outstanding loans made to residents in Louisiana amounting to about $10,000. Between the first of January and the 1st of April 1904, the Plaintiff loaned to persons in Louisiana the sum of $1492.

"The method of making these loans was that described by Mr. McHardy, the resident superintendent."

"*Q.* I want you to describe to the Court the method by which a loan is applied for to the Company and passed on by the Company and how the contract is accepted."

37 A. The policy holder applies to me for a loan on his policy; I take the application and I advise the Company and procure the necessary note.

Q. Where do you procure that note from?

A. From the home office at New York.

Q. Who passes on the application?

A. The home office?

Q. In case they decide to accept the loan, they advise you?

A. Yes.

Q. Then what do you do?

A. I take the policy, with the note, and send it to the home office, and if they pass upon it approvingly, the check is sent to me, personally.

Q. Where were the notes and the policy securing the notes representing this $10,000 on the first day of January 1904? In other words, where were they located?

A. In New York.

Q. Are those notes always located in New York?

A. Yes, sir.

Q. That is to say, they are sent by you to New York, when?

A. Immediately upon the loan being completed.

Q. Do you in any case retain for more than 24 or 49 hours the evidence of indebtedness in your office?

A. No sir.

Q. In other words, within 24 or 48 hours the notes and policies go to the Home office in the course of business?

A. Yes, sir.

In the Syllabus to the brief of the Appellant the following among other propositions are laid down:

1. The doctrine of *mobilia sequuntur personam* is subject to so many exceptions that it can be applied only in the simplest cases Story on Conflict of Laws 2d Ed. Sec. 334 P. 414. 175. U. S. 309. 177 U. S. 133. 188 U. S. 203. Blackstone *vs.* Miller.

2. It can never prevail in the face of positive law to the
38 *to the* contrary 4 M. 20, 5 M. 23, 7 M. 24, 17 La. 590, 8 R. 414, 24 Ann. 93, 579; 31 Ann. 509 especially when there is a positive tax law to the contrary. 2 Ann. 667, 9 Ann. 166; 10 Ann. 391; 12 Ann. 577. The decisions in 41 Ann. 656, 1017, do not controvert that principle, because under the tax acts of 1886 and 1888 there were no provisions in conflict with the doctrine of *mobilia sequuntur personam.*

3. The jurisprudence of the Courts of other States establish this as one of the exceptions to the maxim. 2 Jones Eq., N. C. 51; 21 Vt. 161; 9 N. H. 42; 47 Mo. 600; 29 Cal. 533; 40 Mo. 580; 14 Kan. 602; 40 Ill. 198; 2 Duer. 110; 3 N. Y. 390; and has also been maintained in 47 Ann. 1544; 49 Ann. 49; 49 Ann. 1175. The decision in 44 Ann. 765 is not sustained by the authorities cited therein.

19 Wall. 499 and 106 U. S. 333, in effect, overrule 15 Wall. 300; 44 Ann. 776, while seeming to oppose our contention, yet only modifies it while 46 Ann. 1, is against it.

4. Investments by a non resident of the State are subject to taxation under the laws of the State when made by a resident agent who is employed to invest moneys at whose office the loans are made payable, and to whom the notes taken for loans are returned for collection. 177 U. S. 133; 175 U. S. 309.

5. Whether our contention hereinbefore set forth be correct or not, there can be no serious question that a State can tax a foreign corporation, especially a foreign insurance company, to any extent

or in any manner it sees proper, for the privilege of doing business in the State. Thompsons Commentaries on Corporations, Secs. 8087 & 7900, Vol. 6, and authorities there cited; Cook on Corps., Vol. 2 4th ed. p. 1080, and authorities there cited; Cooley on Taxation, 387; Desty of Taxation, Vol. 1, 372, 229; Burroughs on Taxation 151; 8 Wall. 168; 10 Wall. 573; 100 Mass. 531; 99 Mass. 148; 10 Wall. 415; 94 U. S. 535; 96 U. S. 12; 113 U. S. 739; 120 U. S. 495; 127 U. S. 640; 143 U. S. 22; 143 U. S. 314; 165 U. S. 194; 166 U. S. 154.

39 On the trial of the case it was admitted that the State Tax Collector threatened a seizure in this case and would proceed unless prevented by order of Court.

On cross examination of Mr. McHARDY the local Superintendent he was questioned as to how the policy holders obtained loans and method of proceedings in respect to their applications and testified as follows:

Q. To whom is application made—to you?

A. Yes, sir.

Q. What do you do after that?

A. I fo-ward the application to the home office with the request that the loan be granted them, (if I consider it all right) and that the necessary loan note be forwarded and the note is sent to me.

Q. Where is the note executed?

A. Here, as far as the signatures are concerned.

Q. What do you do with the note?

A. I take the policy, attach it to the note with any letter necessary in the case, and forward it to the Home Office.

Q. Where is the interest paid on those notes?

A. Here, to me.

Q. And the interest is remitted by you?

A. Yes, sir.

Q. And when the note is liquidated, paid in full—how is that managed?

A. It is invariably paid to me.

Q. Whom is payment made to for final settlement of the note—in the same way as the interest?

A. Yes, sir.

Q. And that note is sent back to you and by your delivered to the owner?

A. Yes, sir.

Q. How do you receive remittances? to pay those borrowers?

A. By check.

40 Q. On what bank?

A. The National Shoe & Leather Bank of New York.

Q. How about renewals for a time when the time expires?

A. The borrower has the right to take up the note when due or to pay interest.

Q. Have you had occasion to sue in the last few years in these Courts, any of those who refused to pay you?

A. No, sir.

Counsel for Appellants say "The sum and substance of the testimony is that the Plaintiffs received about $10,000 a year on loans

which they remit to the Home office and they receive $7000 per week in cash as premiums.

On this showing Plaintiffs contend that the tax can not be assessed on the credits and money loaned on the principle of *mobilia sequuntur personam.*"

In Bluefields Banana Company *vs.* The Board of Assessors reported in the 49th Annual 48, the rule *mobilia sequuntur personam* was declared to be a fiction of the law not resting of itself upon any constitutional foundation and which gives way before express law destroying it in any given case where constitutional requirements do not stand in the way. Answering the claim asserted that the taxation provided for in that case could not be made effective, the Court said "conceding that proposition true it did not furnish a test as to its constitutionality." We see no reason to alter the views so announced. We believe they are in accord with generally accepted judicial opinion. In Blackstone *vs.* Miller 188 U. S. 206, the Supreme Court of the United States referring to the maxim "*mobilia sequuntur personam*" said that "when logic and the policy of a state conflict with a fiction due to historical tradition the fiction must give way."

There can be no doubt that the 7th Section of the Act of 1898 quoted in the judgment of the District Court announced the policy of the state touching the taxation of credits and Bills of Exchange

representing an amount of the property of non-residents

41 equivalent or corresponding to said bill or credits which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to do away with the discrimination theretofore existing in favor of non-residents as against residents and place them on an equal footing. The statute was not arbitrary but a legitimate exercise of legislative power and discretion.

It is not contested that the State has the right in consenting to allow foreign corporations to carry on business within her borders to attach such conditions to such consent as she pleases. These foreign corporations are under no obligation to accept the terms but if they do accept them and carry on business in the State they must comply with them. They can not avail themselves of the benefits of the co-sent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation as well as to anything else. When foreign corporations come into the State for business purposes they are constructively present in the State and voluntarily place themselves within the jurisdiction of the State and accept and subject themselves to the laws thereof.

As was said in Bluefields Banana Co. *vs.* Board of Assessors these foreign corporations doing business in Louisiana transact their business precisely as do resident business men and corporations. They derive all the advantages to be obtained from the State and City governments which residents receive and we see no reason why they should not be taxed as claimed, unless there be insuperable legal objections in the way.

This language was approvingly quoted in Comptoir National *vs.*

Board (52 A, 1322). Taxation is the corelative of protection. The evidence in the present case established the fact that the notes referred to were signed, by the borrowers in the State of Louisiana and delivered there to the local superintendent of the Company, who turned over to them in Louisiana the amount borrowered of the Company.

42 As stated in the Comptoir National case "the particular manner or instrumentality by which the monies used by the Company in the course of its continuing business in Louisiana was obtained, was a matter of no moment or significance in the consideration of the question we are now dealing with. The Company beyond question loaned money in Louisiana which for the purposes of the loan were the companies monies and the borrowers gave their own notes to the Company to represent the monies received from the Company. The notes represent an equivalent amount of money of the Company in Louisiana. The moment these monies were received in Louisiana and there delivered to the Company's local Superintendent, the taxing power attached against the Company and immediately after the delivery of the monies to the borrowers, the tax struck the notes delivered to the Superintendent in representation of the monies, regardless of what disposition might be made of them subsequently. It is a mistake to suppose that because the tax debtor might in order to evade the payment of the tax, or for any other reason remove the notes beyond the limits of the State, the tax would be destroyed. An evasion would not be tolerated. It would not be necessary for the State to go beyond its limits for the enforcement of the tax against the Company because the notes should have been taken outside the State. Art. 233 of the Constitution declares "Taxes on movables shall be collected by seizure and sale by the Tax Collector of the movable property of the delinquent to pay the tax. Sale of such property shall be made at public auction without appraisement, after ten days advertisement made within ten days from date of seizure and shall be absolute and without redemption. If the tax collector can find no corporeal movables of the delinquent to seize he may levy on corporeal rights by notifying the debtor thereof or he may proceed by summary rule in the Courts to compel the delinquent to deliver up for sale property in his possession or under his control.

The State would have power over the person of the debtor
43 through service on their local superintendent. In Blackstone *vs.* Miller the Court said that power over the debtor gave jurisdiction and that matters could be disposed of not because of any theoretical speculation concerning the whereabout of the debt but because of the practical fact of the power of the State over the person of the debtor.

There was no reason for or justice in the withdrawal by the Company of the notes, and the holding of them in its vaults until required in Louisiana for the purpose of their payment as it is declared was done. Their value was in no manner enhanced by that fact. Their value continued to rest in the fact that the notes were secured as to payment by the property of the debtors in Louisiana

and through the right to their enforcement under Louisiana law in the Courts of that State. The investment by the Company was as to value due to nothing in New York but entirely to what was done in Louisiana. It is claimed by the Plaintiff that the law of Louisiana takes its property from it without due process of law but it is not pointed out in what way there was not due process of law, and we fail to see wherein there was not. Appellant does not urge and could not urge that it did not obtain the equal protection of the law, for what it is now seeking to preserve is *the greater protection* which has been accorded foreign corporations over residents of Louisiana up to the time that the statutes were changed.

We are of the opinion that the judgment appealed from adjudging and decreeing the statute to be unconstitutional, is erroneous. We hereby hold and decree the statute to be constitutional.

For the reasons assigned it is ordered adjudged and decreed that in so far as the judgment appealed from decrees the assessment against the plaintiff, in the sum of $10,000 for the year 1904, on account of credits, monies, loaned etc., to be null and void, and decrees the unconstitutionality of the law upon which it is based, the same be annulled, avoided and reversed and that in so
44 far as such judgment fails to award to the defendants the attorney's fees allowed by law, the same be amended to the extent that there now be judgment in favor of the defendants the Tax Collector and against the plaintiff condemning the latter to pay in addition to the tax to be recovered 10% on that portion thereof with respect to which no reduction of assessment has been obtained in this proceeding.

It is further ordered adjudged and decreed that in all other respects the judgment appealed from be affirmed, the plaintiff to pay the costs of appeal.

Petition to Amend Judgment.

To the Honorable the Chief Justice and Associate Justices of the State of Louisiana:

This the petition of defendants and appellants herein respectfully prays that the judgment herein rendered on Nov. 20th 1905, be so amended as to give and allow the attorney for the Tax Collector herein ten per cent. on the tax on the Twenty Five Hundred Dollars the difference the reduction prayed for and the Four Thousand Dollars reduced assessment which the court granted, the said ten per cent. being the full amount allowed by the statute No. 170 of 1898 Section 57, which provides that "where the party applying for the reduction shall be decreed not entitled to the reduction as claimed by him, the delinquent owing the tax and the party applying for the reduction of the assessment shall pay a commission to said attorney of ten per cent.; calculating the same upon the aggregate amount of taxes and penalties so collected and paid over to the tax collector: Petitioners believe that said omission from the judgment was an oversight on the part of the court in not incorporating the same in the judgment; Petitioners further represent that although

the amount of the ten per cent. on the tax of Twenty Five Hundred Dollars is small amounting to only a few dollars yet petitioners desire that the refusal or omission of the court in this respect
45 shall not serve as a precedent whereby the court can refuse to grant ten per cent. in cases wherein the parties applying for the reduction shall not obtain the whole reduction as claimed by them.

Wherefore the premises considered petitioners respectfully pray that the judgment be so amended as hereinbefore set forth and for all such orders of relief as may be needed herein.

(Signed) F. C. ZACHARIE,
Att'y for Tax Colllector.
(Signed) H. GARLAND DUPRE,
Att'y for City of N. O.
(Signed) GEO. H. TERREBERY,
Att'y for Board of Assessors, all for Defendants, Appellants.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Co. *vs.* Board of Assessors. Petition for Amendment of Judgment. Filed November 22nd, 1905. (Signed) Paul E. Mortimer, Deputy Clerk.

Petition for Rehearing.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS ET AL.

Appeal from the Civil District Court, Parish of Orleans.

The petition of the Metropolitan Life Insurance Company, appellee in the above cause, with respect, shows:

That in the opinion and decree rendered in this cause on the 20th day of November, 1905, there is error to the prejudice of petitioner, and that a rehearing should be granted herein for the following reasons:

First: The Court erred in holding that Section 7 of Act No. 170 of the General Assembly of Louisiana of 1898, sought to be enforced against petitioner herein, was a constitutional act; and erred in holding that said act did not operate to deprive petitioner of its property without due process of law, in violation of the Fourteenth Article of Amendment of the Constitution of the United States.

Second: The Court erred in holding that the enforcement
46 of Section 7 of Act No. 170 of the General Assembly of Louisiana of 1898, sought to be enforced against petitioner herein, was constitutional; and erred in holding that such enforce-

ment did not, and would not operate to deprive petitioner of its property without due process of law, in violation of the Eleventh Article of Amendment of the Constitution of the United States.

Third: The Court erred in holding that the moment petitioner delivered to a Louisiana borrower money agreed to be lent him, such money was "struck" by the tax herein attempted to be levied and to be enforced; and that the moment the note evidencing the debt arising out of said loan was delivered to petitioner, the lender of said money, by the borrower, that such note was "struck" by said tax, and that the subsequent situs and disposition of the note so given was immaterial, for the reason that a tax cannot "strike" property before it is levied; and because even if money so lent, and notes so given, could be "struck" by the tax herein levied in manner as held by the Court, the money lent by petitioner was lent, and the notes received by petitioner were received, long prior to the assessment and levy of the tax herein; and were, at the time of the assessment and levy, out of the State of Louisiana, and could not have been "struck" by, or in any wise affected by said levy.

For the foregoing, and other errors manifest in said opinion and decree, petitioner prays that said decree be vacated and set aside, and that a rehearing be granted herein; and for all general relief.

(Signed) HOWE, SPENCER & COCKE,
Attorney- for Plaintiff, Appellant.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *vs.* Board of Assessors *et al.* Petition for Rehearing. Filed November 24, 1905. (Signed) T. McC. Hyman, Clerk.

47 *Rehearings Refused.*

NEW ORLEANS, TUESDAY, *January* 2, 1906.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors—Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices. By the Court.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS.

It is ordered that the Rehearings applied for in this case be Refused.

Petition for Writ of Error.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK
vs.
THE BOARD OF ASSESSORS ET AL.

To the Honorable Joseph A. Breaux, Chief Justice of the Supreme Court of Louisiana:

The petition of the Metropolitan Life Insurance Company of New York, plaintiff and appellee in the above entitled and numbered cause, respectfully represents:

That in the above entitled and numbered cause there was drawn in question the validity of a statute of the State of Louisiana, towit,—Sections one and 7 of Act No. 170 of the General Assembly of said State of the year 1898,—and of an authority exercised under said statute, on the ground of their being repugnant to the Constitution and laws of the United States, and especially on the ground of their being repugnant to and violative of the fourteenth Article of Amendment of the said Constitution of the United States; and the decree of this court, rendered herein on the 20 day of November, 1905, which became final on the 2nd day of January, 1906, was in favor of the validity of said statute and of the authority exercised thereunder, and against the right, title, privilege and immunity
48 specially set up and claimed by the petitioner, plaintiff in said cause.

Petitioner is advised that in the said judgment the court erred in the several respects exhibited in the assignment of errors annexed hereto, and that it is entitled to have said judgment as to said questions reviewed by the Supreme Court of the United States on writ of error; and it therefore prays Your Honor to allow said writ of error to remove the said cause to the Supreme Court of the United States, to approve the proper bond and to sign the citation, and all according to law.

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Petitioner.

(Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *versus* The Board of Assessors *et al.* Petition for writ of Error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Assignment of Errors.

Supreme Court of Louisiana.

No. 15501.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK.
versus
THE BOARD OF ASSESSORS ET AL.

Comes the Metropolitan Life Insurance Company of New York, plantiff and appellee in the above, entitled and numbered cause, and complaining of the judgment and decree herein rendered on the 20 day of November, 1905, which became final on the 2nd day of January, 1906, assigns in the said judgment and decree the following errors:

First: The court erred in holding that Sections one and seven of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, in so far as the same attempts to authorize the taxation of property of the plaintiff situated, owned and held by it out of the State of Louisiana at the time of the assessment and levy by
49 the defendants herein of the tax herein complained of, and at all times thereafter, was a valid statute; and erred in holding that said statute did not abridge the rights, privileges and immunities of said plaintiff, a citizen of the United States, and did not operate to deprive it of its property without due process of law, and to deny it the equal protection of the laws; all in violation of Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

Second: The court erred in enforcing by its said judgment said Sections one and seven of Act No 170 of the General Assembly of Louisiana, and in holding that the same operated to authorize the taxation of property of the plaintiff situated, held and owned by it outside of the State of Louisiana and beyond the jurisdiction of said State at the time of the levy and assessment of the tax complained of herein, and at all subsequent times, forasmuch as said statute, as so enforced by the judgment herein, deprived said plaintiff of the privileges and immunities of a citizen of the United States, operated to deprive it of its property without due process of law, and to deny to it the equal protection of the laws; all in violation of Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

Third: The court erred in holding that said Sections one and seven of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, as construed, applied, and as sought to be enforced by the defendants, appellants herein, did not abridge the privileges and immunities of the plaintiff as a citizen of the United States, and did not deprive it of its property without due process of law, and deny to it the equal protection of the laws,

and did not contravene Section 1 of the fourteenth Article of Amendment of the Constitution of the United States.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Plaintiffs.

50 (Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York *versus* The Board of Assessors *et al.* Assignment of Errors. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Order Granting Writ of Error.

Granted without supersedeas upon the plaintiff furnishing bond in the sum of Five hundred Dollars.

New Orleans, January 13, 1906.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Metropolitan Life Insurance Company of New York, plaintiff and the City of New Orleans, the Board of Assessors for the Parish of Orleans, State of Louisiana, and John Fitzpatrick, State Tax Collector First District New Orleans, defendants, said suit being No. 15,501 of the docket of the said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their
51 being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said the Metropolitan Life Insurance Company of New York, the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and

full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and here held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court, the Thirteenth day of January, in the year of our Lord one thousand nine hundred and six.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 15,501. The Metropolitan Life Insurance Company of New York plaintiff in error, *versus* (Writ of Error) City of New Orleans *et als.* Defendants in error. Copy of a Writ of Error lodged in the Clerk's office of the Supreme Court of
52 Louisiana, in pursuance of the statute in such cases made and provided, the 13th day of January one thousand nine hundred and six. Howe, Spencer & Cocke Attorneys of Plaintiff in error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Bond for Writ of Error.

Supreme Court of Louisiana.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK, Plaintiff Appellee,
versus
THE BOARD OF ASSESSORS ET ALS., Defendants and Appellants.

Know all men by these presents, That we, the Metropolitan Life Insurance Company of New York, as principal, and William W. Howe, of the City of New Orleans, as surety, are held and firmly bound unto the City of New Orleans, the Board of Assessors for the Parish of Orleans and John Fitzpatrick, State Tax Collector for the First District of the City of New Orleans, in the full and just sum of Five hundred dollars ($500.00), to be paid to the said obligees and each of them *in solido*, their certain attorneys, executors, administrators, successors and assigns; to which payment,

well and truly to be made, we bind ourselves, our heirs, executors, successors, administrators and assigns, jointly and severally by these presents.

Sealed with our seals and dated this — day of January in the year of our Lord one thousand nine hundred and six.

Whereas lately at a session of the Supreme Court of Louisiana, in a suit depending in said court between the said Metropolitan Life Insurance Company of New York and the said obligees, defendants, entitled "Metropolitan Life Insurance Company of New York *vs.* The Board of Assessors *et als.*" being No. 15,501 of the docket of said Supreme Court of Louisiana, a judgment was rendered against said plaintiff, obligor, which became final January 2nd, 1906, and the said Metropolitan Life Insurance Company of New York, said plaintiff obligor, having obtained a writ of error and filed a copy thereof in the clerk's office of the
53 said Court to reverse the final judgment in the aforesaid suit, and a citation addressed to said obligees, defendants citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at Washington, in the District of Columbia, within thirty days from the date of said citation.

Now, therefore, the condition of the above obligation is such that if the said Metropolitan Life Insurance Company of New York shall prosecute its writ of error to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK,

(Signed) By HOWE, SPENCER & COCKE,
Its Attorneys.

(Signed) W. W. HOWE, *Surety.*

Sealed with our seals and delivered in the presence of

(Signed) CHAS. J. SMITH.

Witness

(Signed) J. G. PRIETO.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

Before me, the undersigned Notary Public in and for the Parish of Orleans, State of Louisiana, personally came and appeared William W. Howe, who being duly sworn, deposes and says: I am the owner of real estate in the City of New Orleans, and am worth, over and above all my just debts, and property exempt by law from execution the sum of one thousand dollars.

(Signed) W. W. HOWE.

Sworn to and subscribed before me this 13th day of January 1906.

[SEAL.] (Signed) CHARLES J. DENECHAUD,
Notary Public.

Approved.

(Signed) JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

54 (Endorsed:) No. 15,501. Supreme Court of Louisiana. Metropolitan Life Insurance Company of New York, Plaintiff in error *vs.* The Board of Assessors, *et als.* Defendants in error. Bond for writ of error. Filed January 13th, 1906. (Signed) John A. Klotz, Deputy Clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the Supreme Court of the State of Louisiana, do hereby certify that the above and foregoing fifty three pages contain a full, true and complete copy of the proceedings had in the Civil District Court for the parish of Orleans, in a certain suit wherein the Metropolitan Life Insurance Company of New York were plaintiffs, and the Board of Assessors and others were defendants, and also of all the proceedings had in this Supreme Court on the appeal taken by said plaintiffs, which appeal is now on the files thereof, under No. 15,501.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at the city of New Orleans, this Twenty-fifth day of January, *Anno Domini*, one thousand nine hundred and six, and in the one hundred and thirtieth year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

55 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of his said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this the Twenty-fifth day of January, A. D., one thousand nine hundred and six.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Metropolitan Life Insurance Company, of New York, plaintiff, and the City of New Orleans the Board of Assessors for the Parish of Orleans, State of Louisiana, and John Fitzpatrick, State Tax Collector First District, New Orleans, defendants, said suit being No. 15,501, of the docket of said Supreme Court of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of,
57 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said the Metropolitan Life Insurance Company, of New York, the said plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, the thirteenth day of January, in the year of our Lord one thousand nine hundred and six.

[Seal Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

58 [Endorsed:] No. 15,501 Supreme Court of Louisiana Metropolitan Life Insurance Company of New York, plaintiff in error *versus* The Board of Assessors *et al.*, defendants in error Writ of Error. Filed Jan'y 13-1906 John A. Klotz Deputy Clerk

59 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, the Board of Assessors, Parish of Orleans, and John Fitzpatrick, State Tax Collector First District, New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Metropolitan Life Insurance Company of New York is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of he United States, this 13th day of January in the year of our Lord one thousand nine hundred and six.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

Service Accepted.
F. C. ZACHARIE,
Att'y for Tax Coll'r, Def't.
H. G. DUPRE,
Ass't City Att'y for City of New Orleans.
GEO. H. TERRIBERRY,
Att'y B'rd of State Assessors, P'h of Orleans.

60 [Endorsed:] Supreme Court of the State of Louisiana. No. 15501. Metropolitan Life Insurance Co. of New York plaintiff in error *vs.* Board of Assessors *et als.* defendants in error Citation. Sheriff's return. Filed Jan'y 13, 1906 Jan'y 13-1906 John A. Klotz Deputy Clerk.

Endorsed on cover: File No. 20,085. Louisiana supreme court. Term No. 199. Metropolitan Life Insurance Company of New York, plaintiff in error, vs. The City of New Orleans, The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, state tax collector, &c. Filed February 5th, 1906. File No. 20,085.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1906.

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No. 199

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK,
PLAINTIFF IN ERROR.

VERSUS

THE CITY OF NEW ORLEANS,
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS
AND
JOHN FITZPATRICK, STATE TAX COLLECTOR,
DEFENDANTS IN ERROR.

Error to the Supreme Court of the State of Louisiana.

BRIEF FOR THE PLAINTIFF IN ERROR.

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FOR PLAINTIFF IN ERROR.

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BRIEF FOR THE PLAINTIFF IN ERROR.

I.

STATEMENT OF CASE.

This suit was commenced on the 27th day of October, 1904, in the Civil District Court for the Parish of Orleans, by the present plaintiff in error against the defendants

in error, the City of New Orleans, the Board of Assessors for the Parish of Orleans and John Fitzpatrick, State Tax Collector. The object of the suit was, first, to reduce an assessment of ten thousand dollars on money in possession for the year 1904; and, second, to annul an assessment of ten thousand dollars on account of alleged credits for money loaned made for the same year. As the first of these items is not involved in the controversy before this Court, further reference to it will be omitted in this brief.

The petition, so far as pertinent to the issue before this Court, set forth that the plaintiff was a corporation created by and existing under the laws of the State of New York, and that it was domiciled in the City of New York; that its general offices were situated, and its general officers resided in said city and State; that, in the month of January, 1904, it made to the Board of Assessors for the Parish of Orleans its sworn return, as required by law, of property owned by it, and subject to taxation under the laws of the State of Louisiana; that said Board nevertheless proceeded to, and did, assess petitioner upon property not owned or held by it, or any of its officers in said State; that the assessment in the sum of ten thousand dollars made by said Board on account of credits for money loaned at interest was illegal, null and void, for the reason that any credits, bills receivable or money loaned by and due petitioner were not located and payable in Louisiana, but were located and payable and taxable only at petitioner's domicile, and were not subject,

under the Constitution of the United States and the laws of Louisiana, to taxation by the State of Louisiana; that said assessment was an attempt to extend the taxing power of the State of Louisiana beyond the territorial limits and jurisdiction thereof, and constituted a taking of property without due process of law, in violation of the Fourteenth Article of Amendment of the Constitution of the United States, which article petitioner expressly pleaded and claimed the benefit of.

The petition further alleged due application to the proper authorities for cancellation of the assessment so made, the persistence of such authorities in such illegal assessment, tender of the amounts deemed legally due, and threats of seizure by the defendants.

The petition prayed that the assessment in the sum of ten thousand dollars, on account of credits and money loaned at interest, be declared null and void, and that the defendants be severally restrained from collecting, or attempting to collect, any taxes based upon such assessment.

The defendants severally pleaded the general issue.

On the trial it was admitted (Tr., p. 14) that the assessment rolls of 1904 showed plaintiff in error assessed for ten thousand dollars for credits and money loaned at interest. Further admissions in the trial Court reduced the case to the single question of the legality of the assessment of credits in the shape of loans to residents of Louisiana on the security of policies of the plaintiff in error issued to them. On this subject the evidence

was that of a single witness, was quite undisputed, and may be thus summarized:

1. On the 1st day of January, 1904, the plaintiff in error had various loans outstanding and theretofore made to its policy-holders resident in Louisiana, aggregating the sum of ten thousand dollars. (Tr., pp. 9 and 10.)

2. In making these loans the following method was pursued: The policy-holder made application to McHardy, the local agent or superintendent of the company in New Orleans, for the loan desired by him. This application was thereupon forwarded by the agent to the officials of the company in New York. In case it obtained their approval, a note was then and there made out and forwarded to the agent of the company in New Orleans for signature by the borrower. When signed by the borrower, such note, with the policy designed to secure it, was delivered to the agent in New Orleans, and, in his own language,

> "I take the policy, with the note, and send it to the home office, *and if they pass upon it approvingly,* the check is sent to me personally." (Tr., p. 10.)

Such check is then delivered by the agent to the borrower.

3. The notes and policies, after being surrendered for transmission to the home office for approval, are retained in the City of New Orleans only for such time as is necessary to forward them in the regular course of business, and never longer than 24 to 48 hours. (Tr., p. 10.)

4. On the first day of January, 1904, the notes evidencing the loans aggregating the above-mentioned sum of ten thousand dollars were, with the policies securing them, all in New York in the hands of the home office. (Tr., p. 10.)

5. Between January 1, 1904, and April 10, 1904, loans amounting to $1,492 were made by the plaintiff in error to its Louisiana policy-holders. Such loans were made in precisely the same way as the loans made prior to January 1, 1904. (Tr., p. 11.)

6. Payment of interest on notes so taken, and of the principal at maturity, was made to the local agent in New Orleans. Such amounts as were collected by him as principal or interest were remitted to the home office, the note, when paid, being sent back to him for delivery to the maker. (Tr., pp. 12 and 13.)

The trial Court, in deciding the case, said:

> "The evidence also shows, and it is not disputed, that the only 'credits, money loaned and bills receivable,' belonging to the plaintiff, and intended to be taxed, consist of loans made to its policy-holders in this State and evidenced by their notes secured by pledge of its own policies, all of which, as soon as executed, are transmitted to the home office in the City of New York, and are returned to this city only for purposes of collection or renewal.
>
> "The authority under which it is proposed to assess and tax these notes is Section 7 of Act No. 170 of 1898, the last clause whereof reads as follows: '* * * And all bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State, and at

the business domicile of said non-resident, his agent or representative.'

"This section* is identical in terms with the corresponding section of Act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared substantially, in *Liverpool, Etc., Ins. Co. vs. Board of Assessors,* 44 An. 760 and 770, that 'no legislative power existed to change the situs of debts due to non-residents' unless such debts had assumed some 'concrete form' in the evidence thereof and 'such evidences are situated in the State,' language tantamount to a declaration that this provision of the statute was repugnant to some higher law—*i. e.,* was 'unconstitutional'—(on) this high authority, then, I am constrained to declare that so much of the seventh section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to non-residents, unless the same are 'situated in this State,' is unconstitutional and therefore void, and any assessment made in pursuance thereof is therefore null."

The trial Court accordingly rendered judgment for the petitioner.

On appeal to the Supreme Court of Louisiana, this judgment was, on the 20th day of November, 1905, reversed (Tr., p. 32), the Court expressly holding the Act of 1898 constitutional as applied and sought to be enforced.

A petition for a rehearing was filed, considered and denied (Tr., pp. 33 and 34), and the judgment thereupon became final. To reverse said judgment, this writ of error is prosecuted upon the following:

* NOTE—The entire section, with the corresponding section of the Act of 1890, is printed as an appendix of this brief.

II.

ASSIGNMENTS OF ERROR.

FIRST. The Court erred in holding that Sections 1 and 7 of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, in so far as the same attempt to authorize the taxation of property of the plaintiff situated, owned and held by it out of the State of Louisiana at the time of the assessment and levy by the defendants herein of the tax herein complained of, and at all times thereafter, was a valid statute; and erred in holding that said statute did not abridge the rights, privileges and immunities of said plaintiff, a citizen of the United States, and did not operate to deprive it of its property without due process of law, and to deny it the equal protection of the laws; all in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

SECOND. The Court erred in enforcing, by its said judgment, said Sections 1 and 7 of Act No. 170 of the General Assembly of Louisiana of 1898, and in holding that the same operated to authorize the taxation of property of the plaintiff situated, held and owned by it outside of the State of Louisiana, and beyond the jurisdiction of said State at the time of the levy and assessment of the tax complained of herein, and at all subsequent times, for as much as said statute, as so enforced by the judgment herein, deprived said plaintiff of the privileges and immunities of a citizen of the United States, operated to deprive

it of its property without due process of law, and to deny to it the equal protection of the laws; all in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

THIRD. The Court erred in holding that said Sections 1 and 7 of Act 170 of the General Assembly of the State of Louisiana of the year 1898, as construed, applied, and as sought to be enforced by the defendants, appellants herein, did not abridge the privileges and immunities of the plaintiff as a citizen of the United States, and did not deprive it of its property without the process of law, and deny to it the equal protection of the laws, and did not contravene Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

The above assignments of error are insisted on here only in so far as they assert that the statute of Louisiana of 1898, on its face and as construed and applied, operates to deprive the plaintiff in error of its property without due process of law in violation of the Fourteenth Article of Amendment.

III.

ARGUMENT.

First Point.

The property sought to be taxed was beyond the limits and jurisdiction of the State of Louisiana, and the Statute of Louisiana of 1898, as construed and applied, deprives the plaintiff in error of its property without due process of law, in violation of the Fourteenth Article of Amendment.

(1)

Act No. 170 of the General Assembly of Louisiana of 1898 is entitled "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation, and by prescribing the method of assessing and enforcing the same, and by enforcing payment thereof in the several parishes of the State and setting forth the purposes for which said levy is made."

By the first section of said Act it is provided as follows:

> "That for the calendar year A. D. one thousand eight hundred and ninety-eight, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of *all property situated within the State of Louisiana*, except such as is expressly exempted from taxation by law, and the term *property* as herein used means and includes all real estate * * * (and) all rights, credits, bonds and securities of all kinds, all promissory notes, open accounts and other obligations; all cash."

Section 7 of said Act provides in part as follows:

> "That it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand on the date of listing within their respective districts or parishes. • • • And, provided 'further,' in assessing mercantile firms, the true intent and purpose of this Act shall be held to mean the placing of such value upon stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credits, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this State business interests that may claim domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared as assessable within this State and at the business domicile of said non-resident, his agent or representative."

The above-mentioned sections constitute the authority for the assessment which is attacked in this case.

This statute, as now construed by the Supreme Court of Louisiana in this case, authorizes the taxation of every credit which arises from any business transaction conducted within the limits of the State of Louisiana, irrespective of either the nature of the credit or the physical situs of the evidence thereof. Any non-resident who

buys a bond or takes a note, or enters into any contract of any nature out of which a credit arises is, provided he happens to have some sort of place of business, or an agent with a place of business within the State, amenable to be taxed on such credit under the provisions of the act, irrespective of where the note, bond or contract is located.

This tax is expressly declared by the statute to be levied upon property "situated within the State," and is therefore a direct property tax. The Supreme Court of Louisiana has always treated it as such, as will appear from the decisions hereafter cited. And to sustain the statute it necessarily did this, since Article 229 of the Constitution of Louisiana, adopted in the year 1898, provides:

> "The General Assembly of Louisiana may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, associations of persons, and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, ministers," etc.

And since Article 242 of the same instrument provides:

> "Corporations, companies or associations organized or domiciled out of the State, but doing business therein, may be licensed and taxed by a mode different than that provided for home corporations or companies, provided said different mode of license shall be uniform upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies or associations that transact the same kind of business."

From which articles it follows that the tax in question, not being graduated, would, if intended as a license or occupation tax, be wholly void. That it was not so intended, is made further manifest by the passage of Act No. 127 of 1898 pursuant to the authority of the last cited article of the Constitution of that year. This act classifies the various occupations, including insurance, and imposes thereon the payment of a heavy license upon a graduated system. In view of these facts, we apprehend that this Court is bound to deal with the legislation as imposing a direct tax.

We come, then, to a discussion of the proposition which prefaces this argument. It is, however, proper and necessary at the outset to point out the irrelevance to the argument of certain matter contained in the transcript.

(2)

Reference has been made in the foregoing statement of the case to notes aggregating $1,492, executed and delivered to the plaintiff in error subsequent to the first day of January, 1904. The credits represented by these notes are not really involved in the assessment which is attacked. The proof of the execution, existence and location of such notes was made in the lower court in view of the doubt then in the mind of counsel as to the date to which the assessment would be held to relate. The assessment, as already stated, is made under the provisions of Act No. 170 of the General Assembly of Louisiana of 1898.

The Supreme Court of Louisiana has decided that the assessment contemplated by the statute is an assessment on the amount or condition of the taxpayer's property on the first day of January of the year in which the assessment is made, and not on its condition or amount on any day subsequent thereto, and prior to the closing of the assessment rolls.

Home Ins. Co. vs. Board of Assessors, 48 La. An. 451.
Southern Ins. Co. vs. Board of Assessors, 49 La. An. 401.
Palfrey vs. Tax Collector, 106 La. 707.
Palfrey vs. Sheriff, 109 La. 167.
Bunkie Brick Works, Etc., vs. Police Jury, 113 La. 1062.

There is, therefore, no room to contend, and we presume it will not be contended, that the assessment of ten thousand dollars for credits and money loaned at interest includes, or relates to, the loans aggregating $1,492, and made subsequent to January 1, 1904; or that it in fact relates to, or includes, any other loans than those amounting to ten thousand dollars, admitted to have been made prior to, and outstanding on that date. This was apparently the view of the Supreme Court of Louisiana.

As to the notes evidencing these latter loans, it will be observed that the evidence establishes that the obligations of such notes never attached or became enforceable within the limits of the State of Louisiana. The notes were signed, it is true, by the intending borrower in Louisiana; but the transaction was not consummated

until the notes were approved and accepted in New York. When approved by the officials of the company there, checks for the amounts borrowed—*i. e.*, the consideration of the notes so given—were forwarded to the local agent at New Orleans to be delivered to the maker. Prior to the borrower's receipt of such checks, the notes were without consideration, and could not be enforced. Hence, it appears that the notes in question were never for an instant of time physically present in the State of Louisiana as consummated and legally enforceable obligations. The case, therefore, first brings up this question:

Can the State of Louisiana tax, as the property of a New York corporation doing business in Louisiana, promissory notes which became its property in New York, and which at all times subsequent to the moment when they became its property were owned and held by it, and were, with the collateral securing them, physically located in the State of New York?

If this question is to be determined on authority, we feel safe in asserting that we shall be able to demonstrate that it must be answered in the negative.

(3)

The novel character of the doctrine enunciated in the instant case by the Supreme Court of Louisiana, and its denial of what it has itself heretofore held constitutional right, will, we believe, be best exhibited by a chronological reference to the decisions of that Court, arising upon the language of Section 7 of Act No. 106 of 1890, and

Section 7 of Act No. 170 of 1898, upon which this case arises, the section of the former being identical with that of the latter act.

Liverpool and London and Globe Ins. Co. vs. Board of Assessors, 44 La. An. 760 (1892): Assessment of credits of a foreign fire insurance company in the shape of uncollected premiums. *Held,* such credits were not property in the State, or within the State's jurisdiction, and that the statute as sought to be applied was unconstitutional.

Railey vs. Board of Assessors, 44 An. 765 (1892): The facts of this case are entirely similar to those in the case of *Liverpool and London and Globe Ins. Co.,* just cited. In deciding the question over again, the Court said:

> "There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequuntur,* in many respects. Movables having an actual situs in the State may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such concrete form in the evidence thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and, possibly, of negotiable promissory notes, bills of exchange or bonds.
>
> "But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any situs distinct from the domicil of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned. As said by the Supreme Court of the United States: 'To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to the creditors to whom they are payable, and follows their domicil,

wherever that may be. Their debts can have no locality separate from the parties to whom they are ing any *situs* distinct from the domicil of the cred due.' (State Tax on Foreign-Held Bonds, 15 Wall. 300.)

"A State has no more power to subject such debts due to foreign creditors to taxation than it would have to tax their corporeal movables situated at their foreign domicil."

Clason & Co. vs. The City of New Orleans, 46 La. An. (1894): Money standing to the credit of a firm domiciled in England, but doing business in New Orleans, is not within the jurisdiction of the State, and cannot be made the subject of taxation. (Following *Railey vs. Board of Assessors.*)

Bluefields Banana Co. vs. Board of Assessors, 49 An. 43 (1897): Assessment of cash in bank to the credit of a foreign corporation. The unconstitutionality of the act was not pleaded. (Opinion, p. 98.) *Held* (distinguishing the case of *Clason vs. City of New Orleans, supra*), that the assessment was warranted by the statute.

Liverpool and London and Globe Ins. Co. vs. Board of Assessors, 51 La. An. 1028 (1899): Assessment of a foreign fire insurance corporation on uncollected premiums. *Held,* reviewing the foregoing decisions:

"As to 'open accounts' with *(sic)* a foreign corporation for such protection as it may offer, the law to date has not localized them so as to render it possible to assess them here and sell them for taxes."

Comptoir National vs. Board of Assessors, 52 An. 1319 (1900): Assessment of non-negotiable notes located in the State and representing loans made in Louisiana by

the agent of a corporation doing business in the State. *Held*, following the decision of this Court in the suit of *City of New Orleans vs. Stempel*, 175 U. S. 309, that the assessment was valid, the Court saying:

> "The syllabus of that decision declares that *notes and mortgages, the owner of which is domiciled in another State, when they are kept within the State by an agent*, may *be subjected to taxation* by the law of the State in which they are held. A non-negotiable note is certainly sufficiently concrete in form to be an object of taxation. * * * If a person domciled abroad were to die leaving non-negotiable notes in this State in the hands of an agent, the presence of these notes in Louisiana would authorize the opening of the succession in Louisiana for the protection of Louisiana creditors." (Opinion, p. 1331.)

Monongahela River, Etc., Co. vs. Board of Assessors, 115 La. 563 (Nov. 1905): Assessment of due bills of a foreign corporation given by purchasers of coal held in New Orleans and there collected. *Held:*

> "It was within the power of the law-making authority of the State to tax an indebtedness which has taken a concrete form. The written instrument evidencing the indebtedness is 'left within the State in the hands of an agent of the non-resident owner.' So held in *New Orleans vs. Stemple*, 175 U. C. 317, 20 Sup. Ct. 110, 44 L. Ed. 174, as in the case before us for decision.
>
> "The case just cited was referred to in *Board of Assessors Case*, 191 U. S. 401; 24 Sup. Ct. 109, 48 L. Ed. 232, and the principles therein were reaffirmed."

These cases either expressly announce, or tacitly proceed, on the principle that taxation of credits due non-

residents and not within the State in some concrete form, but in the hands of the owner abroad, is unconstitutional and void. This principle, so repeatedly affirmed, the Supreme Court of Louisiana now denies, notwithstanding it has received the repeated sanction of this Court.

In the well-known case of **State Tax on Foreign-held Bonds, 15 Wall. 300,** it was held by this Court that bonds issued by a railroad company were property in the hands of the holders, and when held by non-residents were property beyond the jurisdiction of the State.

In **Railroad Co. vs. Jackson, 7 Wall. 262,** it was held that the State of Pennsylvania had no power to tax the interest of bonds secured by mortgage on property in that State and in the State of Maryland, when such bonds were held by a non-resident alien.

And in **Murray vs. Charleston, 96 U. S. 432-440,** arising out of an attempt on the part of the City of Charleston to subject a debt of the city, due a non-resident, to taxation, it was said:

> "Debts are not property. A non-resident creditor cannot be said to be, in virtue of a debt due to him, a holder of property within the city; and the city council was authorized to make assessments only upon the inhabitants of Charleston, or those holding taxable property within the same."

And in **Erie Railroad Co. vs. Pennsylvania, 153 U. S. 628-648,** it was said:

> "No principle is better settled than that the power of a State, even its power of taxation, in respect of property, is limited to such as is within its jurisdiction."

In the case of **New Orleans vs. Stempel, 175 U. S. 309,** which arose under Section 7 of the Act of 1898 here attacked, a tax was levied upon notes of the defendant in error (who was domiciled in New York), secured by mortgages on real estate in New Orleans; and these notes were physically located in New Orleans and were there in possession of an agent of the defendant in error, who collected the interest and principal as the same matured and deposited it to the credit of his principal in bank in New Orleans. The contention was advanced that the tax violated the due process of law clause of the Fourteenth Article of Amendment. This Court, passing on the contention, elaborately reviewed the above-cited decisions of the Supreme Court of Louisiana, and upon those and its own prior decisions held the assessment and tax valid on the express ground that the indebtedness, having taken a concrete form and become evidenced by notes and mortgages, and such notes and mortgages being physically within the State, the jurisdiction of the State to tax them was complete.

Mr. Justice Brewer, in the course of the opinion, after citing from the case of **State Tax on Foreign-held Bonds,** 15 Wall. 300, [illegible] in part, as follows:

> "But other personal property, consisting of bonds, mortgages, and debts generally, has no situs independent of the domicile of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners," said:
>
> "This last sentence, properly construed, is not to be taken as a denial of the power of the Legislature to establish an independent situs for bonds and mort-

gages when those properties are not in the possession of the owner; but simply that the fiction of law so often referred to declares their situs to be that of the domicile of the owner, *a declaration which the Legislature has no power to disturb, when in fact they are in his possession.*"

And further:

"It is well settled that bank bills and municipal bonds are in such concrete, tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature, and while they may not have become so generally recognized as tangible personal property, yet they have such concrete form that we see no reason why a State may not declare that, if *found within its limits*, they shall be subject to taxation." (Opinion, pp. 322, 323.)

It is further noteworthy that in this decision the Court referred to the susceptibility of choses in action, to seizure and sale, as furnishing a fair test of the existence or non-existence of the State's jurisdiction to tax them. After citing the Louisiana decisions (Opinion, p. 322) to the same effect, that notes and bills of exchange might be seized and sold, but that in order to effect a valid seizure, such bills or notes must be taken into the actual custody of the Sheriff, it said:

"Now, if property can have such situs within the State as to be subject to seizure and sale on execution, it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation." (Opinion, p. 322.)

This is the very test which was laid down by the Supreme Court of Louisiana in the *Comptoir* case, already cited, when it pointed out that if a person domiciled abroad were to die leaving non-negotiable notes in Louisiana in the hands of an agent, the presence of such notes would authorize the opening of his succession in Louisiana for the protection of Lousiana creditors. We take it, therefore, that the converse of the proposition stated must also be true, viz.: That where bills and notes cannot be reached by seizure, and are not so present as to authorize the opening of a non-resident succession in case of death, by reason of being beyond the limits of the State and in the hands and at the domicile of the owner, the State cannot reach them by the exercise of its taxing power, even though it undertake to declare by statute the fiction that they shall be deemed present in the State for purposes of taxation.

The next case in this Court upon the statute in question is that of **Board of Assessors vs. Comptoir National V'Escompte, 191 U. S. 389 (1903)**: The defendant in error was a French corporation doing business in New Orleans. The assessment attacked as contravening the Fourteenth Article of the Amendment was one upon credits, as in the instant case. The credits in question arose out of loans made in New Orleans in the following manner: The intending borrower drew a check in the ordinary form on the Comptoir for the amount of the loan, depositing at the same time the required collateral and a power of attorney reciting, amongst other things,

that when it should become indebted to the Comptoir for money lent, or for any over-draft upon any check, the Comptoir was to have a lien on the security deposited, and the right, in case of failure to reimburse any overdraft or pay any indebtedness due, to sell such collateral and apply the proceeds to the satisfaction of the borrower's liability. It further appeared that when the money was paid it was remitted to Paris by exchange; that the agent had authority to make loans without consulting the Paris office; that the transactions were continuing; and that both the checks in question and collateral securing their payment were never transmitted to Paris, but were at all times kept in the hands of the agent, and were located in New Orleans. Upon this state of facts, which was, to all legal intents and purposes, identical with the state of facts in the *Stempel* case, the Court held the assessment and tax to be valid. Its conclusion upon a review of the decisions, including **Bristol vs. Washington Co., 177 U. S. 133,** and **Blackstone vs. Miller, 188 U. S. 189,** was thus stated:

> "From these cases it may be taken as a settled law of this Court that there is no inhibition in the Federal Constitution against the right of the State to tax property in the shape of credits *when the same are evidenced by notes or obligations, held within the State in the hands of an agent of the owner* for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business."
>
> (Opinion, pp. 403, 404.)

We take it that these two decisions announce with entire distinctness the proposition that property in the shape of credits, evidenced by notes or obligations located in another State and held in the hands of the owner there, cannot constitutionally be made the subject of State taxation.

It was, however, strenuously contended in the Supreme Court of Louisiana, and that Court apparently sanctioned the view (Tr., p. 30), that the decisions of this Court in **Bristol vs. Washington County** and **Blackstone vs. Miller** authorize the levy of taxes on credits, irrespective of whether or not the evidences thereof in concrete form are situated within the State. In substance this was a contention and decision that the principle of localization or *situs* announced and applied in the *Comptoir* and *Stempel* cases, and in the *Foreign-Held Bonds* case, as determinative of the question of jurisdiction had, in the cases mentioned, been repudiated by this Court, and the cases mentioned in effect overruled. Have they?

In the **Bristol case (177 U. S. 133)**, personal property of a citizen of New York, in the shape of notes payable at the office of her agents in Minnesota, where the mortgages securing the notes were held by the agents, and where the notes were returned from time to time for renewal, collection or foreclosure, the agents collecting the amounts thereof and making loans in the name of the principal, generally on their own judgment, and remitting to the principal the collections when required,

or investing them in new loans, was held taxable in Minnesota, notwithstanding the location of the notes in New York. Here it clearly appeared that the debts evidenced by the notes were localized and had obtained a *situs* in Minnesota by virtue of the physical presence there of the mortgages which secured them, both in the hands of the owner's agents, and (presumably) on the records of the State conveyance offices. It was from the sole viewpoint of whether the debt had acquired a *situs* in the State that the Supreme Court of Minnesota dealt with the case; and that it was from this viewpoint, also, that this Court dealt with it is evidenced by its citation of the case of Stempel, where the whole discussion and decision hinged upon whether the debts were or were not in such concrete form in Louisiana as to be susceptible to taxation. That the Court in the *Bristol* case, which was decided in the year 1900, did not mean to abandon the test applied in the *Stempel* case (decided in 1899) is evidenced by its decision in the *Comptoir* case, decided in the year 1903, where that test is again discussed at length and applied. We are then, we think, justified in concluding that the *Bristol* case announces no doctrine in conflict with that announced in the cases of Stempel and the Comptoir.

In the case of **Blackstone vs. Miller (188 U. S. 189)**, a person domiciled in Illinois died, leaving a deposit in a trust company of New York, and a debt due him by a firm domiciled in New York. These assets he disposed of by will, and the transfer was taxed by the State of

New York. This succession, or inheritance tax, was resisted and held valid by this Court on the broad ground that power over the person of the debtor conferred jurisdiction. The inapplicability of the decision to the case at bar is made pointed by the following language contained therein:

> "There is no conflict between our views and the point decided in the case reported under the name of *State Tax on Foreign-Held Bonds*, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the State. *Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. Bacon vs. Hooker*, 177 Massachusetts, 335, 337. Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached. The decision has been cut down to its precise point by later cases. *Savings and Loan Society vs. Multnomah County*, 169 U. S. 421, 428; *New Orleans vs. Stempel*, 175 U. S. 309, 319, 320."

It is submitted, therefore, that the case at bar is within the principle announced and applied in the case of *State Tax on Foreign-Held Bonds*, and the cases of *Stempel*, of *the Comptoir*, and of *Bristol*, and within the exception declared to the principle laid down in *Blackstone vs. Miller;* and that this Court cannot sustain the judgment here without overruling the principle of the four cases first mentioned, and denying the exception admitted as obtaining in the last.

In concluding our argument on this branch of the case, it may be observed that the entire reasoning or method by which the Supreme Court of Louisiana reached the conclusion that the Statute of 1898 was constitutional, amounts to an admission that the property sought to be taxed was beyond the limits of the State. Its reasoning is not at all predicated upon any assumption or finding that such property was within the State in either a physical or legal sense. It is predicated upon one or both of these propositions: (a) Power over the person of the plaintiff in error, through its local representative or agent in Louisiana, was sufficient to give jurisdiction to tax (Tr., p. 31) (b) the Statute of 1898 contained, in effect, a condition that the plaintiff in error should pay taxes on credits of the nature of those involved in this case, and that condition it accepted by doing business in Louisiana. (Tr., pp. 30 and 31.)

Either proposition in effect affirms the physical absence from the State of the property sought to be taxed to be a wholly immaterial circumstance, and from such immateriality the constitutionality of the statute is deduced. In short, while the Court, in its decree, expressly decides, in its reasoning, it, in effect, begs, the constitutional question raised by the pleadings.

As to the first proposition, we do not deem that it requires any extensive refutation, and believe it sufficient to point out that the tax is not one imposed on the plaintiff in error as owner, but one imposed by the

terms of the statute on its property "situated within the State." The language of Mr. Justice Swayne, in **St. Louis vs. Ferry Company, 11 Wall. 423-430,** describes the situation with precision:

> "Upon looking into the enactments under which the taxes in question were assessed, it is obvious that their purpose was not to tax the property through the proprietor, but to tax the things themselves, by reason of their being 'within the city.' The point for us to decide, therefore, is whether they are covered by the legal provisions under which the taxes were imposed. If the taxing officer acted without authority, the taxes were invalid, and the city is not entitled to recover in this action."

But, even if the statute does attempt to impose a personal liability to pay taxes on property within the limits of the State of Louisiana, the plaintiff in error, being a resident of New York, without power to change its residence *(Insurance Co. vs. Francis,* 11 Wall. 210-216; *Railroad Co. vs. Koontz,* 104 U. S. 5-11; *Shaw vs. Quincey Mining Co.,* 145 U. S. 444; *Galveston, etc., Ry. Co. vs. Gonzales,* 151 U. S. 496), the tax is unconstitutional and void. *Dewey vs. Des Moines,* 173 U. S. 193-202.

SECOND POINT.

The Supreme Court of Louisiana cannot be held to have decided that any statute of Louisiana imposed on plaintiff in error, as a condition to doing business in Louisiana, payment of taxes on property in its hands beyond the jurisdiction of the State. But, if the Court did so decide, plaintiff in error may, nevertheless, assert in this Court that the statute is unconstitutional.

A second question arises, or does not arise, in this case, according to the view which may be taken of the meaning and effect of certain language above referred to contained in the opinion of the Supreme Court of Louisiana. The defendants in error, as already pointed out, pleaded the general issue in the trial Court. This pleading in Louisiana reduced the controversy to the question of the truth or falsity of the plaintiff's allegations of fact, and to the legal effect of those facts when and if proven.

Wells vs. St. Dizier, 9 La. An. 119.

In the Supreme Court of Louisiana, the appellants, defendants in error here, made the point in their brief (Tr., p. 28):

> That "a State can tax a foreign corporation, especially a foreign insurance company, to any extent or in any manner it sees proper, for the privilege of doing business in the State."

Apropos, apparently, of the issue thus for the first time sought to be injected into the case, the Supreme Court of Louisiana said:

> "There can be no doubt that the 7th section of the Act of 1898, quoted in the judgment of the District Court, announced the policy of the State touching the taxation of credits and bills of exchange, representing an amount of the property of non-residents equivalent or corresponding to said bill or credits which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to do away with the discrimination theretofore existing in favor of non-residents, as against residents, and place them on an equal footing. The statute was not arbitrary, but a legitimate exercise of legislative power and discretion.
>
> "It is not contested that the State has a right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligations to accept the terms; but, if they do accept them and carry on business in the State, they must comply with them. They cannot avail themselves of the benefit of the consent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation, as well as to anything else. When foreign corporations come into the State for business purposes, they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State, and accept and subject themselves to the laws thereof."

In view of the decree (Tr., p. 32), which proceeds on the single express ground that the Act of 1898 is con-

stitutional, it would seem clear that the language quoted above was used by way of argument, and that it is not to be understood as deciding that the State of Louisiana has in fact undertaken to impose, as a condition upon foreign insurance companies doing business within its limits, payment of taxes on credits of the nature of those involved in this case. In determining whether the language quoted amounts to decision, we are not without what Lord Coke calls "the gladsome light of jurisprudence." The jurisprudence of Louisiana, on the interpretation and effect of a decree or judgment, is perfectly well settled. The opinion and reasons leading up to a decree are called motives *(motifs)*, and the judgment, or decree, is characterized as dispositive *(dispositif)*. In determining the extent of the meaning, or the effect, of a decree or judgment, the dispositive portion controls. It is the thing adjudged, the "*chose jugée,*" the basis of *res adjudicata.*

In **Keane vs. Fisher, 10 La. An. 261, 262,** the rule was applied. The lower Judge had predicated his judgment on some distinctions apparently made in a former opinion of the Supreme Court of Louisiana. (9 La. An., p. 70.) But the Court, in dealing with the surety in 10 An. 262, pointed out that the reasons given in the 9th Annual, the motives, formed no part of the judgment.

In **Hill vs. Bowman, 14 La. 445, 446,** the Court said, through Chief Justice Martin:

> "The original judgment affirmed by us absolutely must have its effect independently of any expression used by the Court in affirming it."

In **Plicque vs. Perret, 19 La. 318, 324,** the same rule was followed on a similar question, the Court saying:

> "The Court (Supreme Court of Louisiana) proceeded to affirm the judgment in all its parts. * * * We are bound to consider the judgment of the District Court as forming that of this tribunal just as much as if it had been copied into our formal decree affirming that of the Court below."

In **Slocomb vs. DeLizardi, 21 La. An. 355, 358,** where the question was argued by distinguished counsel, the same rule was followed, and the rule stated by Marcadé adopted, and which may be translated as follows:

> "It is well understood that it is in the dispositive portion of the judgment, and not in its motives, that the thing adjudged is found. * * * And more than this, the dispositive portion itself presents the thing adjudged only respecting those points actually decided, and not those merely announced. It is by examining the questions on which the parties were in controversy, and which their contest presented —*quid judicandum*—that we easily come to understand what has been adjudged—the *quid judicatum.*"

Applying these elementary rules, we find that the question on which the parties were in controversy was the question of the constitutionality *vel non* of the Act of 1898; that this was the only question determined by the decree, and that the proposition contained in the language cited was a mere "enunciation," or *dictum,* of the Supreme Court of Louisiana, and not necessary to, or really involved in, the decision reached. If we are correct in this view, then this brief might properly end

here; but, as this Court may differ with us, we proceed to consider the language in question on the assumption that it amounted to a decision of the proposition that the Statute of 1898, attacked, makes payment of taxes on foreign credits of the nature of those involved here a condition on the right of the plaintiff in error to do business in Louisiana.

The Court speaks of the right of the State, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases, and then proceeds to state that, when foreign corporations come into the State for business purposes, they are constructively present there, voluntarily place themselves within its jurisdiction, and subject themselves to the laws thereof. The Court does not, in the language cited, or elsewhere in its opinion, undertake to define the conditions to which it refers; nor does it anywhere point out or affirm the existence of any statute that imposes upon foreign corporations generally, or foreign insurance companies in particular, as a condition to doing business in Louisiana, either a general express acceptance of all the statutes of the State, or any specific express acceptance of its statutes relating to taxation; nor will it be asserted by opposing counsel that there is, or ever has been, a statute in Louisiana which contained, or expressly imposed, any such condition.

The language, then, of the Supreme Court of Louisiana can, if it intended to and did decide that the plaintiff

in error was, in doing business in Louisiana, operating under and subject to a condition that it would pay taxes on credits of the nature of those here involved, can mean only this: That Section 7 of the Act of 1898 contains or implies such condition, and that the plaintiff in error, by voluntarily doing business in Louisiana in the year 1903, had impliedly accepted the terms and subjected itself to the operation of said Section 7 in such sense as to preclude it from ever questioning the constitutionality thereof. If this was decided, it is tantamount to a decision that no corporation, undertaking to do business in a State other than the State of its creation, can ever be heard to question the constitutionality of any statute of that State; for, if it enters the State with the statute on the books, it will be said to agree that its terms are constitutional, and shall, *quoad* it, be always enforceable; and, if the statute is passed after its entrance, and it continues business in the State, it will be said to have so conducted itself as to justify the inference of a similar consent. In its ultimate analysis, this theory undertakes to strip the foreign corporation of the last vestige of constitutional protection, for it says to it: "Your entry into the State shall be deemed the equivalent of a stipulation on your part never to contest as unconstitutional any statute in existence at the time of your entry; your abiding in the State under the State's license for any period of time whatever after the passage of any statute which applies to you shall

be deemed the equivalent of a stipulation on your part never to contest such statute as unconstitutional; as to you, the Federal Constitution shall be non-existent."

We submit that this Court will not sanction so radical and far-reaching a doctrine. It is well settled here that the State cannot by statute validly exact from a foreign corporation, as a condition, either to entering the State, or as a condition to continuing to do business therein, an agreement or stipulation that it will not avail itself of the rights and privileges conferred on it by the Federal Constitution.

Insurance Co. vs. Morse, 20 Wall. 445.
Doyle vs. Continental Ins. Co., 94 U. S. 335.
Barrow vs. Burnside, 121 U. S. 186.
Southern Pacific Co. vs. Denton, 146 U. S. 202.
Barrow Steamship Co. vs. Kane, 170 U. S. 100.
Blake vs. McClung, 172 U. S. 239.
Security Mutual Life Ins. Co. vs. Prewitt, 202 U. S. 257.

The utmost that the State can do is to provide that any foreign corporation which asserts a right or privilege under the Federal Constitution shall be deprived of its license to do business in the State. Its power, in other words, may be exerted to punish, but not to prevent, an appeal to constitutional immunity.

Security Mutual Life Ins. Co. vs. Prewitt, supra.

As said by Mr. Justice Harlan, in **Blake vs. McClung, 172 U. S. 239:**

"* * * Generally speaking, the State has the power to prescribe the conditions upon which for-

eign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several States by the supreme law of the land. Indeed, all the powers possessed by the State must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States."

See *Cable vs. U. S. Life Ins. Co.*, 191 U. S. 288.

It is, therefore, clear that if the State of Louisiana had (as it has not) exacted of the plaintiff in error, either prior to its entrance into Louisiana, or prior to the renewal of its license for the year 1904, an express stipulation accepting all of the statutes of the State, and agreeing to forego the right to contest them, or any of them, as denying the rights and privileges secured by the Federal Constitution, such stipulation would be unenforceable, and the statute, so far as it exacted it, void.

A case precisely in point is that of **Cargill Company vs. Minnesota, 180 U. S. 452.** Action was brought by the State to prevent the plaintiff from operating an elevator and warehouse, owned by it in Minnesota, until it should have obtained a license from the Railroad and Warehouse Commission. Such action was predicated upon a statute which, amongst other things, provided that it should be unlawful to receive, ship, store or handle any grain in any elevator or warehouse unless, the owner or owners thereof should have procured

a license therefor from the State Railroad and Warehouse Commission. The statute further provided that every person, company or corporation receiving such license should "be held to have accepted the provisions of this act, and thereby to have agreed to have complied with the same." The defense was that the statute was repugnant to the Constitution of the United States. In deciding the case, this Court sustained the power of the State, so far as the Constitution of the United States is concerned, to require a license for the privilege of carrying on the business of warehousing within its limits, and used the following language:

> "The defendant, however, insists that some of the provisions of the statute are in violation of the Constitution of the United States, and, if it obtained the required license, it would be held to have accepted all of its provisions, and (in the same words of the statute) 'thereby to have agreed to have complied with the same.' The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute, or with any regulations prescribed by the State Railroad and Warehouse Commission that are repugnant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the State, and the valid rules and regulations prescribed by the commission. If the commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions, or with rules or

regulations inconsistent with the Constitution of the United States, the rights of the applicant, or the licensee, could be protected and enforced by appropriate judicial proceedings."

If, then, such an express agreement and stipulation not to assert a Federal right or privilege, and the statute requiring it, would be void, it follows that that sort of acceptance of the statute which the Supreme Court of Louisiana apparently had in mind as resulting from the mere doing of business in the State, in the face of and during the existence of the statute, cannot have the effect of depriving the plaintiff in error of the right to assert that the statute contravenes the Constitution.

This was decided in the case of **Carroll vs. Greenwich Ins. Co., 199 U. S. 401, 409,** which is very much in point, and where the Court said:

"We assume, further, that the position of the plaintiff is not affected by the fact that they are foreign corporations. The act is in general terms and hits all insurance companies. If it is invalid as to some, it is invalid as to all. *United States vs. Ju Toy,* 198 U. S. 253, 262, 263. That the requirements of the act might have been made conditions to foreign companies doing business in the State *(Fidelity Mutual Life Ins. Co. vs. Mettler,* 185 U. S. 308; *Waters-Pierce Oil Co. vs. Texas,* 177 U. S. 28) is immaterial. As we understand the statute, the Legislature did not attempt to reach the result in that way. A company lawfully doing business in the State is no more bound by a general unconstitutional enactment than a citizen of the State. *W. W. Cargill Co. vs. Minnesota,* 190 U. S. 452."

In fine, if we correctly appreciate the decisions of this Court, the State cannot by any device cut off the right to appeal for protection to the Constitution of the United States; it can only provide, by way of penalty, the withdrawal of the license of any foreign corporation which makes such an appeal. In other words, it may drive out, but it cannot destroy. The State of Louisiana has not undertaken to drive out the plaintiff in error. On the contrary, the company has, for years past, and now is, doing business in the State under the State's license; and the State cannot, after inviting it to enter its borders and do business, and after granting it such a license, thereby admitting its compliance with all statutory requirements, now claim that it came into the State, as it were, naked and unshielded by the Constitution.

CONCLUSION.

Summarizing the points made in the foregoing argument, we submit:

(*a*) That a tax on property beyond the jurisdiction of the State amounts to a taking of property without due process of law, contravenes the Fourteenth Article of Amendment, and is void.

(*b*) That the debts on which the plaintiff in error is sought to be taxed, represented by promissory notes of residents of Louisiana, in its actual possession in New York at the time of the levy, were property beyond the jurisdiction of the State of Louisiana.

(*c*) That, while it may be true that the State has power to abolish the fiction that movables follow the person of the non-resident owner, it can only do so in case such movables become separated from the person of such non-resident, and they or their paper representatives are permitted by him to enter or remain within the limits of the State.

(*d*) That the case before the Court properly presents for decision the single question: Is the Louisiana Statute of 1898 constitutional as construed and applied?

(*e*) That, in any event, an express agreement, exacted by the State of a foreign corporation not to invoke the protection of the Constitution, is void; and, the fact that the plaintiff in error transacted business in Louisiana in the face of the general statute, now attacked, can no more deprive it of the right to claim that the statute

contravenes its constitutional rights than if it had expressly agreed to accept and be bound by its provisions.

We may add that, while the actual amount involved in this case is small, the principle is of great importance to a large class of taxpayers in Louisiana. Upon the strength of the decision of the Supreme Court of Louisiana sought to be reviewed, all foreign corporations doing business in the State have been singled out for an enormous increase in assessment; that of the plaintiff in error alone, for the year 1906, being $285,000, against an average of $10,000 in prior years. These assessments are now being contested in scores of suits, most of which will stand or fall with this case.

We ask that the judgment be reversed, and the case remanded.

CHARLES POLLARD COCKE,
For Plaintiff in Error.

WILLIAM WIRT HOWE,
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Of Counsel.

APPENDIX A.

Act No. 170 of the General Assembly of Louisiana of 1898, entitled:

> "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation, and by prescribing the method of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State, and setting forth the purposes for which said levy is made."

* * * * * * * * *

Section 7. Be it further enacted, etc., That it is made the duty of the Tax Assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing within their respective districts or parishes; and if any Tax Assessor shall intentionally or knowingly, or through gross negligence, omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties *in solido* shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment

recovered against him, and all costs of the suit; provided, that the true intent and meaning of this section is that all crops, whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in possession of the lessor, or his agent, and no property shall be taxed twice in the same year; and provided, further, that, in assessing mercantile firms, the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person, or persons, representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative. It shall be the duty of the Assessor to examine into and acquaint himself with the insurance carried upon the property, and, in determining the value of said stock or assets, the average amount of insurance

carried by the assured during the twelve months preceding the date of valuation of same shall be by the Assessor considered in determining the value of said property.

Every insurance company doing business in this State shall, on or before the 1st day of March, in each year, render to the Secretary of State a report, signed and sworn to by its president and secretary, of its condition upon the preceding 31st day of December, which shall include a detailed statement of its assets and liabilities on that day; the amount and character of business transacted in this State; moneys received and expended during the year, and such other information and in such form as he may require.

The Assessor shall also inquire into the purchase price paid for the real property, when acquired by the owner, and ascertain and acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year, or years, next preceding the listing for assessments then being made, and the price paid for property at such sales or transfers shall be considered by the Assessor in determining the value of the real property to be listed for assessment.

APPENDIX B.

Act 106 of the General Assembly of Louisiana of 1890, entitled:

> "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted by law from taxation, and by prescribing the methods of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State, and setting forth the purposes for which said levy is made."

* * * * * * * * *

Section 7. Be it further enacted, etc., That it is made the duty of the Tax Assessor throughout the State to place upon the assessment list all property subject to taxation, including the merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and if any Tax Assessor shall intentionally or knowingly, or through gross negligence omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties *in solido* shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment recovered against him, and all costs of the suit; provided, that all crops, whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in the

possession of the lessor, or his agent, and no property shall be taxed twice in the same year; and provided, further, that, in assessing mercantile firms, the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, or cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party, or parties, to be assessed. And this shall apply with equal force to any person, or persons, representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative.

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Supreme Court of the United States

OCTOBER TERM, 1906.

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CLERK

No. 199.

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK,

PLAINTIFF IN ERROR,

VERSUS

THE CITY OF NEW ORLEANS, THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS AND JOHN FITZPATRICK, STATE TAX COLLECTOR,

DEFENDANTS IN ERROR.

In Error to the Supreme Court of the State of Louisiana.

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

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PLEADINGS AND EVIDENCE.

We deem it unnecessary to repeat here the pleadings and evidence in this cause, as they are correctly cited on pages 4 and 5 of our opponent's brief, except to call the

particular attention of the Court to the fact that these loans were made in the City of New Orleans to the policy-holders of the company, plaintiff in error, by the agent of the company in New Orleans, subject to the approval of the company at its domicil in New York. When these loans were approved by the company at its domicil, the notes were given by the borrowers to the agent in New Orleans and forwarded by the agent to the company at its domicil in New York. When interest became due on these notes, it was paid to the agent in New Orleans and forwarded to the home office in New York, and when the notes fell due they were forwarded from the home office to the agent in New Orleans, who collected from the borrower and surrendered the note to him.

It was contended by the plaintiff in error that, under these circumstances, the notes were not taxable in Louisiana as credits. The trial Court sustained this contention, and ordered the cancellation of the assessment and tax on these notes or credits. From the judgment of the lower Court defendants in error appealed to the Supreme Court of Louisiana, and that Court reversed the decision of the lower Court in an able and lengthy opinion, found on pages 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the record herein. After said decision, plaintiffs in error applied for a rehearing, which was refused. (See page 34.) From that judgment the present writ of error is taken to this Honorable Court.

The Supreme Court of the State of Louisiana having decided that there was nothing in the Constitution and

laws of the State of Louisiana opposed to the taxing of these notes, we take it, as too well settled by a long line of decisions of this Honorable Court, that on this question your Honors will not go behind the decision of the highest Court of the State upon this point.

As was said by Mr. Justice Brewer in a very recent case (*Michigan Central Railroad vs. Powers*, 201 U. S. 291):

> "The unconstitutionality of a statute may depend upon its conflict with the Constitution of the State, or with that of the United States. If conflict with the State Constitution is the sole ground of attack, the Supreme Court of the State is the final authority (*Merchants' Bank vs. Pennsylvania*, 167 U. S. 461, and cases cited in the opinion), while in the other case the ultimate decision rests with this Court."

It, therefore, seems unnecessary for us to reply to that portion of the argument which is embraced in pages 14 to 27 of our opponent's brief. While it is true that in the cases, 44 La. An. 760, 765, *Clason & Co. vs. City of New Orleans;* 46 La. An. —; 51 La. An. 1028, and 115 La. An. 563, the Court still held to the illegality of the taxation of credits not represented by notes or other written evidences of indebtedness, and not permanently present in the State of Louisiana, yet those decisions were based on the former decisions under the Statute of 1888, for, in 51 An., they say, on page 1034:

> "The revenue law enacted in 1888 is substantially the same, and so not less broad in its scope than the Act of 1890."

The Court overlooked the fact in these two decisions that the Statute of 1890 and the present Statute of 1898, in Section 7, Act 170 of 1898, contain the following provision:

> "And this shall apply with equal force to any person or persons representing, in this State, business interests that may claim a domicil elsewhere, the intent and purpose being that no non-resident, either by himself or through an agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicil of said non-resident, his agent or representative."

This clause was first introduced in the Act of 1890, amending the Act of 1888, in order to correct a deficiency in the Act of 1888. Indeed, the Supreme Court of Louisiana had, in 41 An. 646, said that it was within the power of the Legislature, in regard to judgments, to make them taxable at the domicil of the debtor, declaring that, "in absence of legislative provisions to the contrary, judgments, like debts, have their *situs* at the domicil of the creditor," thus suggesting, as it were, the necessity of legislative action to make debts taxable at the domicil of the debtor. The decision of the Supreme Court in this case corrects that error, and the Court in its opinion (page 21) meets the question fairly and squarely by declaring that these notes under the clause of the act which

we have cited are taxable in the State of Louisiana, and says, on page 30:

> "The evident object of the statute was to do away with the discriminiation theretofore existing in favor of non-residents and against residents and place them on an equal footing."

So while it is true that the Supreme Court of Louisiana has not always adhered to the position so unequivocally assumed by it in the instant case, that fact cuts no figure in the present aspect of the litigation. It is clear beyond all possibility of doubt that the Supreme Court of Louisiana recognized in its opinion in this cause the right of the State of Louisiana to tax the property of non-residents doing business in this State in the manner set forth in this record. That view, as the last expression of the State's highest tribunal, will be regarded as controlling by this Court, whose province is not to reconcile or differentiate apparently conflicting decisions of a State Court. This Court accepts as correct and as final the interpretation put upon a particular State statute in a given case, regardless of past deviations in the jurisprudence of the State. Such was the policy of the Supreme Court of the United States as declared in the recent case of *Cohen vs. Brewster*, No. 91, October term, 1906 (not yet reported), where conflicting Louisiana decisions were invoked to overturn the decision of the Supreme Court of Louisiana on a tax matter, and where this Court held that it would go no further than the case at bar to ascertain

what was the law of Louisiana on the subject-matter under consideration.

Your Honors, in *Blackstone vs. Miller,* 188 U. S. 189, and *Washington County vs. Bristol,* 177 U. S. 133, to which we need not refer at length, have affirmed the power of State taxation of notes which were given in the State and were payable in the State, although the notes were held in New York until such time as it became necessary to collect or renew them. This was done by forwarding the notes back to the agent in the State which was the domicil of the debtor.

The only question, therefore, which we think is properly before this Court, is whether the taxation of these notes under these statutes offends against the Fourteenth Amendment of the Constitution of the United States. The application of that amendment to matters of State taxation has been repeatedly passed upon by this Court, and its general attitude upon the subject is summed up in one of its last utterances. Said the Court in *Michigan Central Railroad vs. Powers,* quoted above (201 U. S. 93):

> "We have had frequent occasion to consider questions of State taxation in the light of the Federal Constitution, and the scope and limits of national interference are well settled. There is no general suprvision on the part of the nation over State taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign, both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the Circuit Court

in this case: 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a State from changing its system of taxation in all proper and reasonable ways.' * * * It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice."

We have already cited *Blackstone vs. Miller* and *Washington County vs. Bristol,* in both of which cases your Honors have decided that taxation under the circumstances disclosed by this record does not offend against the Fourteenth Amendment. We submit, further, that the record in this cause shows that the assessment herein assailed meets the criterion set up by this Court, when, speaking through Mr. Justice Brown, it declared, in *Union Transit Company vs. Kentucky,* 199 U. S. 194, that "the power of taxation is exercised upon the assumption of an equivalent rendered in the protection of the property and person of the taxpayer." The plaintiff in error has an agent in Louisiana, through whom it makes loans to citizens of Louisiana, and obtains written evidences of such loans, which obligations are enforceable solely under the laws and in the Courts of that State. The temporary absence of these evidences of debt from the State of Louisiana does not deprive that State of its right to impose a tax on these obligations. They arise from business done in this State, and, in return for the

tax, the owner secures an equivalent in the protection accorded to his property by the laws of Louisiana.

Again, the property is not PERMANENTLY out of the State. When the loan is discharged by payment, the note evidencing same is returned to the Louisiana agent, who surrenders it to its maker and accepts payment therefor in Louisiana. Thus one element emphasized by this Court in many decisions, and notably in *Delaware Co. vs. Penna.*, 198 U. S. 341, as making for the unconstitutionality of assessments of this nature, is lacking in the instant case. The property is not permanently out of the State, but only absent temporarily, "from motives of convenience or design," and is accordingly subject to the taxing power of the State.

We have thus far argued this case on the principle which would apply to private persons holding the notes, non-resident within the State.

Even if it were granted, however, that our contention hitherto made could not be sustained, and that the doctrine of *mobilia sequuntur personam* could not be abolished by positive statute, in so far as non-resident persons or individuals are concerned, then there is another principle which entirely differentiates the case of foreign insurance companies doing business in the State.

It has been uniformly decided that a State has a right to entirely exclude a foreign insurance company from doing business within its borders, or that it can impose such taxation as it sees fit.

One of the latest and most thorough treatises on the law of taxation lays down the doctrine as follows:

"With exceptions hereafter indicated, relating to cases where foreign corporations are engaged in interstate commerce, or to cases where they are agencies of the United States, and to other special cases elsewhere considered, the Federal Constitution imposes no restraint upon the States in regard to taxation of foreign corporations, but the rule is that the States have the right to exclude them entirely, they have the power to impose upon them such burdens as the conditions of their entering as they may see fit; and these burdens or impositions may as well take the form of a taxation at a greater rate or upon a different principle from that applicable to domestic corporations as any other. When, therefore, the foreign corporation is of such a character—as, for instance, an insurance company, and consequently not engaged in interstate commerce—that the State has the power to exclude it altogether, it is under no Federal restraint in respect of this power of taxation over it. As a foreign corporation is not, within the domestic State, entited to the *privileges* and *immunities of citizens of other States*, within the meaning of the Federal Constitution, it cannot demand, under that Constitution, that it shall be taxed at the same rate and on the same principles as corporations of the domestic State."

Thompson's Commentaries on Corporations, Sec. 8087, Vol. 6, and prior sections and authorities there referred to. The italics are the author's.

"*Foreign corporations when deemed persons.* * * * They are also deemed persons within the

meaning of a statute relating to *taxation*, unless a different intent is indicated in the statute."

Thompson's Commentaries on Corps., Vol. 6, Sec. 7900, authorities in note 31 N. Y. 32; 18 Abb. Pr. (N. Y.) 118; 28 How. Pr. (N. Y.) 41. The italics are the author's.

In support of this principle, Cook on Corporations, Vol. 12, 4th Ed., p. 1080, among other authorities which we will discuss later on in this brief, has the following in note 4:

"A tax on manufacturing corporations to the extent of the business which they do in the State is constitutional and enforceable. (131 N. Y. 64; also 10 Wall. 66; 133 N. Y. 323; 143 U. S. 305; 134 U. S. 594; 52 N. J. L. 308; 44 Fed. Rep. 24; 141 N. Y. 118, and a multitude of other authorities.)"

"Foreign insurance companies may be required to pay a tax as a condition of doing business in the State, even if home companies are not taxed, or are taxed by a different standard. The tax is not a regulation of commerce. Notwithstanding the insurance company is taxed, its agents may also be required to pay a license fee as such."

Cooley on Taxation, p. 387, and authorities in notes 2 and 3; 48 Ill. 172; 32 Nev. 424; 10 Wall. 410; 34 N. J. 479; 35 N. J. 574; 85 Penn. St. 513; 94 Ill. 364; 104 Ill. 653; 8 Wall. 168; see, also, Desty on Taxation, Vol. 1, p. 372; *Ibid.*, p. 229.

Burroughs on Taxation, p. 151, in treating of taxation on foreign corporations, says:

"While it may be true, as a matter of principle, that taxation should be laid for the purpose of revenue by an equal and uniform mode, yet, what shall

be the subjects of taxation, the mode and the rate are in the discretion of the Legislature in the absence of express constitutional limitation on the subject of taxation, a discretion which has no limitation, except that its exercise shall not abridge any of the private rights of person or property secured by the Constitution."

This doctrine was maintained in *Paul vs. Va.*, 8 Wallace, 168, in which case the State of Virginia had laid a discriminating tax on foreign insurance companies doing business in that State at a greater rate than on her own domestic insurance companies.

The Court sustained the State law, and decided that the business of insurance was not commerce or interstate commerce, and that a State had the right to impose any tax upon a foreign insurance company doing business in its State it deemed proper.

This was in regard to a license tax. In 10 Wallace, 573, they held similarly in respect to a law of Massachusetts which imposed a tax of one per cent. on the premiums received in Massachusetts by insurance companies incorporated under the laws of Massachusetts; two per cent. on all premiums received by the companies incorporated under the laws of the other States in the Union, and four per cent. on all premiums received by companies doing business in the State, and chartered under the laws of countries other than the United States. In that decision the Court said, referring back to the case of *Paul vs. Virginia:*

"That corporations created by a State could exercise none of the functions or privileges conferred by

its charter in other States of the Union, except by the comity and consent of the latter.

"This proposition disposes of the case before us. Plaintiff is a foreign corporation, and it is conducting business in the State of Massachusetts."

The case is more fully reported in 100 Mass. 531, and see, also, 99 Mass. 148.

The doctrine was held in 10 Wallace, 415, in a license case similar to *Paul vs. Virginia.* In 94 U. S. 535, the same doctrine was announced in a license case. In 96 U. S. 12, it was held that the right of the State to tax corporations in this manner, when engaged in interstate commerce, did not exist.

So in 113 U. S. 739, the Court said:

"The right of the people of a State to prescribe generally by its Constitution and laws the terms upon which a foreign corporation shall be allowed to carry on its business in the State has been settled by this Court. (*Bank of Augusta vs. Earle,* 13 Pet. 519; *Paul vs. Virginia,* 8 Wall. 168; *Ducat vs. Chicago,* 10 Wall. 410.)"

In 120 U. S. 496, a tax of the State of Tennessee on foreign drummers was declared unconstitutional because it violated the interstate commercial clause, but the Court said that the right of the State to tax foreigners doing business in the State was limited "only in those cases in which the States themselves, as well as individual citizens, are subject to the restraints of the higher law of the Constitution." The same was held in 127 U. S. 640, in

drummer tax was held in 128 U. S. 129, unconstitutional, as interfering with the commerce clause. The same was held in 129 U. S. 147.

In 143 U. S. 22, the Court said:

> "The old rule expressed in the maxim of *mobilia sequuntur personam*, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middle Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs*, the law of the place where the property is kept and used,"

and cites five prior decisions of the United States Supreme Court and Story and Wharton's Conflict of Laws, already quoted by us. The Court had just said:

> "No general principles of law are better settled, or more fundamental, than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of any other State."

In 143 U. S. 314, the Court said:

> "Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the State. As to a foreign corporation—and all corporations in States other than the State of their creation are deemed to be foreign corporations—it can claim a right to do business in another State, to any extent, only subject to the conditions imposed by its laws."

In 165 U. S. the Supreme Court sustained a State tax on the proportion of capital of a non-resident express company, which its property in Ohio represented, and "that the distribution among the several counties is a matter of State regulation."

In 166 U. S. 154, the Court again said:

> "The tax in controversy was nothing more than a tax on the intangible property of the company in Kentucky, and was sustained as such by the Court of Appeals, as consistent with the provisions of the Constitution of Kentucky, in reference to taxation. And for the reasons given, and on the authorities cited in *Adams Express Co. vs. Ohio State Auditor*, 165 U. S. 194, we are unable to conclude that the method of taxation prescribed by the State of Kentucky and followed in making this assessment is in violation of the Constitution of the United States."

In the fuller statement of the case (p. 156), by the dissenting Judges, it is said that the tax statute includes "the tangible property of such corporations, which property—that is, the intangible property—whether situated in or out of the State, shall be considered and estimated in fixing the value of the corporate franchises."

In a very recent case, *Parke, Davis & Co. vs. Comptroller of New York*, the Supreme Court of the United States sustained a State tax on the business and franchise of a Michigan corporation manufacturing drugs in the City of Detroit, but doing business in the City of New York.

In that case the Court said:

> "It must be regarded as finally settled by frequent decisions of this Court that, subject to certain limitations as respects interstate and foreign commerce, a State may impose such conditions upon permitting a foreign corporation to do business within its limits as it may judge expedient; and that it may make the grant or privilege dependent upon the payment of a specific license tax or a sum proportioned to the amount of its capital used within the State. (*Paul vs. Virginia*, 8 Wall, 168; *Horn Silver Mining Co. vs. New York*, 143 U. S. 305.)"

This doctrine was also fully sustained in the decision of the Supreme Court of the State of Louisiana, in the cause at bar, in the following language:

> "It is not contested that the State has the right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligation to accept the terms; but, if they do accept them, and carry on business in the State, they must comply with them. They cannot avail themselves of the benefits of the consent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation as well as to anything else. When foreign corporations come into the State for business purposes, they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State, and accept and subject themselves to the laws thereof."

As was said in *Bluefields Banana Co. vs. Board of Assessors*, 49 La. An. 43:

> "These foreign corporations doing business in Louisiana transact their business precisely as do resident business men and corporations. They derive all the advantages to be obtained from the State and city governments which residents receive, and we see no reason why they should not be taxed as claimed, unless there be insuperable legal obligations in the way."

This doctrine was approvingly quoted in *Comptoir National vs. Board*, 52 An. 1322. Taxation is a correlative of protection. The evidence in the present case established the fact that the notes referred to were signed by the borrowers in the State of Louisiana, and delivered there to the local superintendent of the company, who turned over to them in Louisiana the amount borrowed of the company.

As stated in the *Comptoir National case:*

> "The particular manner or instrumentality by which the moneys used by the company in the course of continuing its business in Louisiana was obtained was a matter of no moment or significance in the consideration of the question we are now dealing with. The company, beyond question, loaned money in Louisiana, which, for the purposes of the loan, were the company's moneys, and the borrowers gave their own notes to the company to represent the moneys received from the company. The notes represent an equivalent amount of money of the company in Louisiana. The moment these moneys were received in Louisiana, and there delivered to the com-

pany's local superintendent, the taxing power attached against the company, and, immediately after the delivery of the money to the borrowers, the tax struck the notes delivered to the superintendent in representation of the moneys, regardless of what disposition he might make of them subsequently. It is a mistake to suppose that, because the tax debtor might, in order to evade payment of the tax, or for any other reason, remove the notes beyond the limits of the State, the tax would be destroyed. An evasion would not be tolerated. It would not be necessary for the State to go beyond its limits for the enforcement of the tax against the company because the notes should have been taken out of the State. Article 233 of the Constitution declares: 'Taxes on movables shall be collected by seizure and sale by the Tax Collector of the movable property of the delinquent to pay the tax. Sale of such property shall be made at public auction without appraisement, after ten days' advertisement made within ten days. If the Tax Collector can find no corporeal movables of the delinquent to seize, he may levy on corporeal rights by notifying the debtor thereof, or he may proceed by summary rule in the Courts to compel the delinquent to deliver up for sale property in his possession or under his control.' ''

This doctrine seems now to be universally recognized. A recent work (Gray on the Limitations of Taxing Power and Public Indebtedness, Sec. 87, p. 69) says:

> "Persons are not permitted to avail themselves for their own benefit of the laws of a State in the conduct of business within its limits, and then to escape their due contribution to the public needs through action of this sort (sending the notes out of the State), whether taken for convenience or by design."

A number of cases are cited in the note in support of the doctrine, and in Section 88 of the same work it is said:

> "In a Pennsylvania case, the fact that the property was employed in business in the State was regarded as the controlling feature of jurisdiction."

And, again, under Section 98, page 76, the same author says:

> "Although in nearly all the cases which have been referred to there was some physical evidence of the credits in the State upon which the Courts rested the jurisdiction, yet the real element in most of those cases was that the property taxed was *used in business in the State.*"

And in the same section the author says:

> "This principle leads up to the conclusion that capital of a non-resident, kept in a State for investment and reinvestment, is taxable in that State, no matter in what form it is—regardless of how the credits in which *that capital is invested are evidenced, and regardless of where the evidences are.*" (The italics are Mr. Gray's.)

In regard to the taxation of foreign corporations, the same author (Gray) says, on page 44, Section 57:

> "A foreign corporation can only come into a State and do business there by consent of the State; and the charge imposed by the State as a condition of that consent is not, ordinarily, a tax on property: although it is conceivable, of course, that some tax on property might be imposed as such a condition."

And in the notes (55 and 56) to the text a number of cases are cited from the various States in which the tax on foreign corporations has been sustained as a property tax.

We think that, by all these authorities, we have abundantly established the principle that a foreign corporation, such as the plaintiff in error here, doing business in Louisiana, and loaning money therein, and taking notes therefor, is not only properly taxable under the Constitution and laws of Louisiana, but that the assessment and taxation of the notes thus taken in the business do not offend against the Fourteenth Amendment to the Federal Constitution, nor any principle of equity or justice. For the tax law of Louisiana does not seek to impose on non-residents or foreign corporations doing business in the State any heavier burden than that borne by its own citizens and residents, thus liberally placing non-residents and foreign corporations on precisely the same basis as its own citizens in paying their proportion of the tax for their protection in their business.

All of which is respectfully submitted.

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Defendants in Error.

Supreme Court of the United States.

No. 199.—October Term, 1906.

Metropolitan Life Insurance Company of New York, Plaintiff in Error,
vs.
The City of New Orleans, The Board of Assessors for the Parish of Orleans, and John Fitzpatrick, State Tax Collector, &c.
} In error to the Supreme Court of the State of Louisiana.

[April 8, 1907.]

Mr. Justice Moody delivered the opinion of the Court.

This is a writ of error to review the judgment of the Supreme Court of Louisiana, which sustained a tax on the "credits, money loaned, bills receivable," &c., of the plaintiff in error, a life insurance company incorporated under the laws of New York, where it had its home office and principal place of business. It issued policies of life insurance in the State of Louisiana and, for the purpose of doing that and other business, had a resident agent, called a superintendent, whose duty it was to superintend the company's business generally in the State. The agent had a local office in New Orleans. The company was engaged in the business of lending money to the holders of its policies, which, when they had reached a certain point of maturity, were regarded as furnishing adequate security for loans. The money lending was conducted in the following manner: The policy holders desiring to obtain loans on their policies applied to the company's agent in New Orleans. If the agent thought a loan a desirable one he advised the company of the application by communicating with the home office in New York, and requested that the loan be granted. If the home office approved the loan the company forwarded to the agent a check for the amount, with a note to be signed by the borrower. The agent procured the note to be signed, attached the policy to it, and forwarded both note and policy to the home office in New York. He then delivered to the borrower the amount of the loan. When interest was due upon the notes it was paid to the agent and by him transmitted to the home office. It does not appear whether or not the notes were returned to New Orleans for the endorsement of the payments of interest. When the notes were paid it was to the agent, to whom they were sent to be delivered back to the makers. At all other times the notes and policies securing them were kept at the home office in New York. The disputed

tax was not *eo nomine* on these notes, but was expressed to be on "credits, money loaned, bills receivable," &c., and its amount was ascertained by computing the sum of the face value of all the notes held by the company at the the time of the assessment. The tax was assessed under a law, (Act 170 of 1898,) which provided for a levy of annual taxes on the assessed value of all property situated within the State of Louisiana, and in 7 provided as follows:

"That it is the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing within their respective districts or parishes. . . . *And provided further*, In assessing mercantile firms the true intent and purpose of this act shall be held to mean the placing of such value upon stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, &c., as will represent in their aggregate a fair average on the capital, both cash and credits, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this State business interests that may claim domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared as assessable within this State and at the business domicile of said non-resident, his agent or representative."

The evident purpose of this law is to lay the burden of taxation equally upon those who do business within the State. It requires that in the valuation for the purposes of taxation of the property of mercantile firms the stock, goods and credits shall be taken into account, to the end that the average capital employed in the business shall be taxed. This method of assessment is applied impartially to the citizens of the State and to the citizens of other States or countries doing business, personally or through agents, within the State of Louisiana. To accomplish this result the law expressly provides that "all bills receivable, obligations or credits arising from the business done in this State shall be assessable at the business domicile of the resident." Thus it is clear that the measure of the taxation designed by the law is the fair average of the capital employed in the business. Cash and credits and bills receivable are to be taken into account merely because they represent the capital and are not to be omitted because their owner happens to have a domicile in another State. The law was so construed by the Supreme Court of Louisiana, where, in sustaining the assessment, it was said:

"There can be no doubt that the seventh section of the act of 1898, quoted in the judgment of the District Court, announced the policy of the State touching the taxation of credits and bills of exchange representing an amount of the property of non-residents equivalent or corresponding to

said bills or credits which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to do away with discrimination theretofore existing in favor of non-resident as against residents, and place them on an equal footing. The statute was not arbitrary but a legitimate exercise of legislative power and discretion."

The tax was levied in obedience to the law of the State, and the only question here is whether there is anything in the Constitution of the United States which forbids it. The answer to that question depends upon whether the property taxed was within the territorial jurisdiction of the State. Property situated without that jurisdiction is beyond the State's taxing power, and the exaction of a tax upon it is in violation of the Fourteenth Amendment to the Constitution. *Louisville Ferry Co.* v. *Kentucky*, 188 U. S. 385; *Delaware &c. Railroad Co.* v. *Pennsylvania*, 198 U. S. 341; *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194. But personal property may be taxed in its permanent abiding place, although the domicile of the owner is elsewhere. It is usually easy to determine the taxable situs of tangible personal property. But where personal property is intangible, and consists, as in this case, of credits reduced to the concrete form of promissory notes, the inquiry is complicated, not only by the fiction that the domicile of personal property follows that of its owner, but also by the doctrine, based upon historical reasons, that where debts have assumed the form of bonds or other specialties, they are regarded for some purposes as being the property itself, and not the mere representative of it, and may have a taxable situs of their own. How far promissory notes are assimilated to specialties in respect of this doctrine, need not now be considered.

The question in this case is controlled by the authority of the previous decisions of this court. Taxes under this law of Louisiana have been twice considered here, and assessments upon credits arising out of investments in the State have been sustained. A tax on credits evidenced by notes secured by mortgages was sustained where the owner, a non-resident who had inherited them, left them in Louisiana in the possession of an agent, who collected the principal and interest as they became due. *New Orleans* v. *Stempel*, 175 U. S. 309. Again, it was held that where a foreign banking company did business in New Orleans, and through an agent lent money which was evidenced by checks drawn upon the agent, treated as overdrafts and secured by collateral, the checks and collateral remaining in the hands of the agent until the transactions were closed, the credits thus evidenced were taxable in Louisiana. *Board of Assessors* v. *Comptoir National*, 191 U. S. 388. In both of these cases the written evidences of the credits were continuously present in the State, and their presence was clearly the dominant factor in the decisions. Here the notes, though present in the State at all times when they were needed, were not continuously present, and during the greater part of their lifetime were

absent and at their owner's domicile. Between these two decisions came the case of *Bristol* v. *Washington County*, 177 U. S. 133. It appeared in that case that a resident of New York was engaged through an agent in the business of lending money in Minnesota, secured by mortgages on real property. The notes were made to the order of the non-resident, though payable in Minnesota, and the mortgages ran to her. The agent made the loans, took and kept the notes and securities, collected the interest and received payment. The property thus invested continued to be taxed without protest in Minnesota until finally the course of business was changed by sending the notes to the domicile of the owner in New York, where they were kept by her. The mortgages were, however, retained by the agent in Minnesota, though his power to discharge them was revoked. The interest was paid to the agent and the notes forwarded to him for collection when due. Taxes levied after this change in the business were in dispute in the case. In delivering the opinion of the court Mr. Chief Justice Fuller said: "Nevertheless, the business of loaning money through the agency in Minnesota was continued during all these years, just as it had been carried on before, and we agree with the Circuit Court that the fact that the notes were sent to Mrs. Bristol in New York, and the fact of the revocation of the power of attorney, did not exempt these investments from taxation under the statutes as expounded in the decisions to which we have referred. . . ."

Referring to the case of *New Orleans* v. *Stempel*, the Chief Justice said:

"There the moneys, notes and evidences of credits were in fact in Louisiana, though their owners resided elsewhere. Still, under the circumstances of the case before us, we think, as we have said, that the mere sending of the notes to New York and the revocation of the power of attorney did not take these investments out of the rule.

"Persons are not permitted to avail themselves, for their own benefit, of the laws of a State in the conduct of business within its limits, and then to escape their due contribution to the public need, through action of this sort, whether taken for convenience or by design."

Accordingly it was held that the tax was not forbidden by the Federal Constitution.

In this case the controlling consideration was the presence in the State of the capital employed in the business of lending money, and the fact that the notes were not continuously present was regarded as immaterial. It is impossible to distinguish the case now before us from the Bristol case. Here the loans were negotiated, the notes signed, the security taken, the interest collected, and the debts paid within the State. The notes and securities were in Louisiana whenever the business exigencies required them to be there. Their removal with the intent that they shall

return whenever needed, their long continued though not permanent absence, cannot have the effect of releasing them as the representatives of investments in business in the State from its taxing power. The law may well regard the place of their origin, to which they intend to return, as their true home, and leave out of account temporary absences, however long continued. Moreover, neither the fiction that personal property follows the domicile of its owner, nor the doctrine that credits evidenced by bonds or notes may have the situs of the latter, can be allowed to obscure the truth. *Blackstone* v. *Miller*, 188 U. S. 189. We are not dealing here merely with a single credit or a series of separate credits, but with a business. The insurance company chose to enter into the business of lending money within the State of Louisiana, and employed a local agent to conduct that business. It was conducted under the laws of the State. The State undertook to tax the capital employed in the business precisely as it taxed the capital of its own citizens in like situation. For the purpose of arriving at the amount of capital actually employed, it caused the credits arising out of the business to be assessed. We think the State had the power to do this, and that the foreigner doing business cannot escape taxation upon his capital by removing temporarily from the State evidences of credits in the form of notes. Under such circumstances they have a taxable situs in the State of their origin.

The judgment of the Supreme Court of Louisiana is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.